Ungku Sulaiman bin Abdul Majid & Anor v Director of Lands and Mines & Anor

HIGH COURT (JOHOR BAHRU) — NOTICE OF MOTION NO 25–31 OF 1998
ABDUL MALIK ISHAK J
11 APRIL 2001

Land Law *— Acquisition of land — Redemption of land by state government — No prior consent from beneficiaries — State government acquired land under wrong section of Land Enactment — Whether redemption can be made by third party — Whether law of limitation applied — Johor Land Enactment (No 1) 1950 ss 42, 54 & 68(ii)*

The applicants were the co-administrators of the estate of the late Ungku Abdullah. The estate was in relation to a property located in Johor Bahru ('the property'). The applicants deposed that they were made to understand that the property was charged to a chettiar in 1890 by Ungku Abdullah who later died in 1893. The property was later redeemed by the government in 1895. The applicants further deposed that the property had been acquired by the Johor State Government under s 54 of the Enacment in 1950 without informing and without paying any compensation and/or damages to the registered proprietor of the property or to the surviving beneficiaries of the late Ungku Abdullah. It was submitted that the acquisition of the property by the state government was without basis and not valid in law. The applicants claimed from the state government for the return of the property and in the event that this could not be done, both the applicants claimed compensation and/or damages to be accorded to them together with the other beneficiaries whose rights had been denied. The respondent submitted that based on the minutes written by the then Commissioner of Lands and Mines, Johor dated 27 December 1953, the property was acquired by the Johor State Government after the Johor State Government had redeemed the property on the order of His Royal Highness the Sultan and thereafter the property together with the building thereto were vested in the Johor State Government. The minutes revealed that the property had become state land under s 54 of the Enacment without any formal enquiry being held. It also revealed that the Telecoms building was being built on the said property at that time. The issues before the court were: (i) whether the Johor State Government could redeem the property without the prior consent and instructions of the beneficiaries of the late Ungku Abdullah and whether such redemption was in accordance with the law and/or valid in law; (ii) whether the acquisition of the property under s 54 of the Enacment was null and void; and (iii) whether the law of limitation could be applied in the present case.

Held:

(1) The Johor State Government had directed and/or instructed their agent to redeem the property from the chettiar without any prior

consent and instructions from the beneficiaries of the late Ungku Abdullah. That being the case the redemption exercise was null and void in so far as it concerned the legal rights of the beneficiaries of the late Ungku Abdullah. Section 68(ii) of the Enacment clearly suggests that a third party who has no interest in the property could not redeem that property. Any redemption undertaken by the third party, like the present case, would render that redemption invalid (see pp 102D–F, 103A).

(2) Section 54 of the Enacment is entirely meant for the purpose of rectification of the registers. Section 54 does not give authority nor power to the respondents to acquire the property. Further, before invoking s 54, the provision of s 42 of the same Enactment must first be complied with. Since the property was acquired under the wrong section of the Enacment, the acquisition must be declared as null and void and of no effect at all (see pp 106G, 108B).

(3) Since the property was acquired under the wrong section of the Enacment, there was in fact no acquisition at all undertaken by the Johor State Government and consequently, the property was never vested in the Johor State Government. The ownership of the property remained throughout and to this day as the estate of the late Ungku Abdullah and the estate had not been distributed to the beneficiaries as yet. When the property was purportedly acquired in 1950, time remained still and the law of limitation was not activated at all. In fact the law of limitation was not applicable to the facts of the present case (see p 114B–C).

(4) In view of the fact that the Telecommunications Department are currently sited on the property, the court made an order that the Johor State Government compensate by way of damages to both the applicants and the beneficiaries of the estate of Ungku Abdullah whose rights have been infringed. The damages must be assessed by the senior assistant registrar (see p 121F–G).

[Bahasa Malaysia summary

Pemohon-pemohon merupakan pentadbir bersama harta pusaka Almarhum Ungku Abdullah. Harta pusaka tersebut adalah berkenaan harta yang terletak di Johor Bahru ('harta tersebut'). Pemohon-pemohon memberikan keterangan bersumpah bahawa mereka difahamkan bahawa harta tersebut telah digadaikan kepada seorang chettiar pada tahun 1890 oleh Ungku Abdullah yang meninggal dunia pada tahun 1893. Harta tersebut kemudiannya ditebus oleh kerajaan pada tahun 1895. Pemohon-pemohon juga memberikan keterangan bersumpah bahawa harta tersebut telah diperolehi oleh Kerajaan Negeri Johor di bawah s 54 Enakmen Tanah (No 1) 1950 tanpa memberitahu dan tanpa memberi pampasan atau gantirugi kepada

pemilik berdaftar harta tersebut atau kepada waris-waris Almarhum Ungku Abdullah. Ia dihujahkan bahawa pemerolehan harta tersebut oleh kerajaan negeri tidak berasas dan tidak sah di sisi undang-undang. Pemohon-pemohon menuntut pemulangan harta tersebut daripada kerajaan negeri, dan sekiranya ini tidak dapat dilaksanakan, kedua-dua pemohon menuntut gantirugi atau pampasan diberikan kepada mereka bersama dengan waris-waris yang lain yang telah dinafikan hak mereka. Responden berhujah bahawa berdasarkan minit-minit yang ditulis oleh Pesuruhjaya Tanah dan Lombong Johor pada ketika itu bertarikh 27 Disember 1953, harta tersebut diperoleh oleh Kerajaan Negeri Johor, dan setelah Kerajaan Negeri Johor telah menebus harta tersebut atas perintah Duli Yang Maha Mulia Sultan Negeri Johor, harta tersebut serta bangunan padanya terletakhak pada Kerajaan Negeri Johor. Minit-minit mendedahkan bahawa harta tersebut telah menjadi tanah kerajaan di bawah s 54 Enakmen Tanah (No 1) tanpa perlaksanaan apa-apa penyiasatan rasmi. Ia juga mendedahkan bahawa bangunan telekomunikasi sedang dibina di atas harta tersebut pada ketika itu. Perkara-perkara di hadapan mahkamah adalah: (i) sama ada Kerajaan Negeri Johor boleh menebus harta tersebut tanpa terlebih dahulu mendapat kebenaran dan arahan daripada waris-waris Almarhum Ungku Abdullah dan sama ada penebusan tersebut menurut undang-undang dan sah di sisi undang-undang; (ii) sama ada pemerolehan harta di bawah s 54 Enakmen Tanah (No 1) adalah batal dan tidak sah; dan (iii) sama ada undang-undang pembatasan had masa dapat dipakai dalam kes ini.

Diputuskan:

(1) Kerajaan Negeri Johor telah mengarahkan agennya untuk menebus harta tersebut dari chettiar tersebut tanpa apa-apa kebenaran atau arahan terlebih dahulu dari waris-waris Almarhum Ungku Abdullah. Oleh kerana ini, kegiatan penebusan tersebut batal dan tidak sah di mana ia melibatkan hak waris-waris Almarhum Ungku Abdullah di sisi undang-undang. Seksyen 68(ii) Enakmen Tanah (No 1) dengan jelas menunjukkan bahawa suatu pihak ketiga yang tidak mempunyai apa-apa kepentingan dalam harta tersebut tidak boleh menebus harta tersebut. Apa-apa tebusan yang dilaksanakan oleh pihak ketiga, seperti dalam kes ini, akan menyebabkan tebusan tersebut menjadi tidak sah (lihat ms 102D–F, 103A).

(2) Seksyen 54 Enakmen Tanah (No 1) diwujudkan bagi tujuan membetulkan daftar. Seksyen 54 tidak memberi kuasa kepada responden-responden untuk memperolehi harta tersebut. Lagipun, sebelum menggunakan s 54, peruntukan s 42 Enakmen yang sama mestilah dituruti terlebih dahulu. Oleh kerana harta tersebut diperolehi di bawah seksyen Enakmen Tanah (No 1) yang salah, pemerolehan tersebut mestilah diisytiharkan batal

dan tidak sah dan tidak mempunyai kesan langsung (lihat ms 106G, 108B).

(3) Oleh kerana harta tersebut diperolehi di bawah seksyen Enakmen Tanah (No 1) yang salah, hakikatnya, terdapat langsung tiada pemerolehan yang dilakukan oleh Kerajaan Negeri Johor dan akibatnya, harta tersebut tidak pernah terletakhak pada Kerajaan Negeri Johor. Pemilikan harta tersebut selama ini dan hingga ke hari ini kekal sebagai harta pusaka Almarhum Ungku Abdullah dan harta pusaka tersebut belum diagihkan kepada waris-warisnya lagi. Apabila harta tersebut dikatakan diperoleh pada tahun 1950, masa tidak berjalan dan undang-undang pembatasan tidak digunakan langsung. Undang-undang pembatasan tidak boleh diguna pakai terhadap fakta-fakta kes ini (lihat ms 114B–C).

(4) Memandangkan bahawa Jabatan Telekomunikasi kini terletak di harta tersebut, mahkamah memberikan perintah bahawa Kerajaan Negeri Johor mestilah memberi pampasan berbentuk gantirugi kepada kedua-dua pemohon dan waris-waris harta pusaka Ungku Abdullah yang telah dilanggari hak mereka. Gantirugi mestilah dinilaikan oleh penolong kanan pendaftar (lihat ms 121F–G).]

Notes

For cases on acquisition of land generally, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1305–1472.

Cases referred to

Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru [1995] 2 MLJ 287 (refd)

Bank Bumiputra (M) Bhd v Mahmud bin Haji Mohamed Din (Datin Hajjah Salma bte Md Jamin, Intervener) [1989] 1 MLJ 381 (refd)

Bank of America National Trust Savings Association v Cheong Hoon Chong [1983] 1 MLJ 285 (refd)

Barnard v National Dock Labour Board [1953] 1 All ER 1113 (refd)

Barnato, Re [1949] Ch 258 (refd)

Barrell v Fordree [1932] AC 676 (refd)

Becke v Smith (1836) 2 M & W 191 (refd)

Blackburn v Attorney General [1971] 1 WLR 1037 (refd)

British Railways Board v Pickin [1974] AC 765 (refd)

Capper v Baldwin [1965] 2 QB 53 (refd)

Commissioner of the Federal Capital v Insurance Company of North America [1968] 2 MLJ 143 (refd)

Cox v Green [1966] 1 Ch 216 (refd)

Credit Corporation (M) Bhd v Fong Tak Sin [1991] 1 MLJ 409 (refd)

Crespigny v Wittenoom (1792) 4 TR 790 (refd)

A *Dato Menteri Othman bin Baginda v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 (refd)
Datuk Amir Kahar bin Tun Mustapha v Tun Mohd Said bin Keruak & Ors [1994] 3 MLJ 737 (refd)
Eliajar v Dayanidhi AIR 1971 Ori 133 (refd)
B *Fulcrum Capital Sdn Bhd v Dato' Samsudin Abu Hassan (Rahaz Sdn Bhd & Anor, Interveners) (and another application)* [2001] 5 CLJ 73; [2001] 1 AMR 875 (refd)
Gouriet v Union of Post Office Workers [1978] AC 435 (refd)
Hanson v Radcliffe Urban District Council [1922] 2 Ch 490 (refd)
Harrison v Croydon London Borough Council [1968] Ch 479 (refd)
C *King, Re, deceased* [1963] Ch 459 (refd)
Kredin Sdn Bhd v YTF Investments Sdn Bhd [1998] 1 MLJ 46 (refd)
Krishna Kumar v JN Bhan 75 CWN 573 (refd)
Langrish v Watts [1903] 1 KB 636 (refd)
Lee Lee Cheng v Seow Peng Kwang [1960] MLJ 1 (refd)
Leong Chee Kong & Anor v Tan Leng Kee (No 2) [2001] 5 CLJ 408; D [2001] 1 AMR; 1117 (refd)
Lim Cho Hock v Speaker, Perak State Legislative Assembly [1979] 2 MLJ 85 (refd)
Lim Eng Kay v Jaafar bin Mohamed Said [1982] 2 MLJ 156 (refd)
Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh [1992] 1 MLJ 147 (refd)
E *Merdeka University Bhd v Government of Malaysia* [1981] 2 MLJ 356 (refd)
Oversea-Chinese Banking Corp Ltd v Philip Wee Kee Puan [1981] 2 MLJ 83 (refd)
Oversea-Chinese Banking Corp Ltd v Philip Wee Kee Puan [1984] 2 MLJ F 1 (refd)
Pandurang v Maruti Hari AIR 1966 SC 153 (refd)
Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135 (refd)
Perwira Habib Bank Malaysia Bhd v Oon Seng Development Sdn Bhd [1990] 1 MLJ 447 (refd)
G *Petaling Tin Bhd v Lee Kian Chan & Ors* [1994] 1 MLJ 657 (refd)
Powell v Kempton Park Racecourse Co, Ltd [1899] AC 143 (refd)
R v Banbury (Inhabitants) (1834) 1 Ad & El 136 (refd)
Ramlal Motilal v Rewa Coal Fields AIR 1961 SC 361, (1961) 2 SCJ 556 (refd)
H *Ridge v Baldwin* [1964] AC 40 (refd)
Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd [1921] 2 AC 438 (refd)
Surrendra Overseas Ltd v Government of Sri Lanka [1977] 1 WLR 565 (refd)
Sussex Peerage Claim (1844) 2 Cl & F 85 (refd)
I *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 (refd)
Turquand v Board of Trade (1886) 11 App Cas 286 (refd)

Webster v Southwark LBC [1983] QB 698 (refd)
Wee Tiang Teng v Ong Chong Hooi & Anor [1978] 2 MLJ 54 (refd)
Yew Bon Tew & Anor v Kenderaan Bas Mara [1983] 1 MLJ 1 (refd)

Legislation referred to

Law of Property Act 1925 [Eng] s 14(1)
Limitation Act 1939 [Eng]
Limitation Act 1953 ss 24, 25, 26(1), (2), 27, 28, 29, Pt III
Rules of the High Court 1980 O 15 r 16
Specific Relief Act 1950 s 41

Mary Jesmal Pereira (*Teh Poh Teik & Co*) for the applicants.
Abdul Rasid bin Sudin (Assistant State Legal Adviser, Johor Bahru) for the respondents.

Abdul Malik Ishak J:

Introduction

This judgment examines the rigors of the law of limitation and it adds color to an otherwise boring subject. According to the case of *Pandurang v Maruti Hari* AIR 1966 SC 153, in approaching questions of limitation one must be prepared to consider it as mixed questions of law and fact. And any delay must be explained forthwith (*Eliajar v Dayanidhi* AIR 1971 Ori 133; *Krishna Kumar v JN Bhan* 75 CWN 573; and *Ramlal Motilal v Rewa Coal Fields* AIR 1961 SC 361, (1961) 2 SCJ 556).

Notice of motion in encl 3

By way of a notice of motion in encl 3, as amended in encl 6, both the applicants sought the following orders:

(a) *an extension of time* to file the present application;

(b) a *declaration* that the property *redeemed* by the Government in 1895 and the *acquisition* of the said property (*referring to Geran 158, Lot 129, Bandaran Johor Bahru*) on 24 October 1950 was *illegal*;

(c) a *declaration* that the *acquisition* by the Johor State Government under s 54 of the Enacment vide CL&M 18/1982 dated 24 October 1950, CL&M 226/1950 was *null and void under the law*;

(d) that the *transfer* of the said land (*referring to the said property in question*) by the Johor State Government to the Federal Government was *illegal and void under the law*;

(e) *in the event the acquisition was valid*, the applicants apply that *compensation* and/or *damages* be paid to them in regard to the acquisition of the said land (*referring to the said property in question*); and

(f) any *other relief* which the court *deemed fit and appropriate*. (Emphasis added.)

The notice of motion was supported by an affidavit affirmed by both the applicants on 21 September 1998, as seen in encl 2. By way of a response,

the respondents through one Shubanah bte Yusuf — an assistant director of Lands and Mines, State of Johor, affirmed an affidavit in reply on 6 September 1999, as seen in encl 7. Both the applicants responded by filing an affidavit in reply on 1 October 1999, and that affidavit in reply can be seen in encl 8.

Raja Azlan Shah, acting CJ (Malaya) (as he then was), a brilliant judge of his time and now His Royal Highness the Sultan of Perak, in the case of *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135, blazed a trail for other judges to follow when His Royal Highness, in fine language, said at p 148 of the report:

> Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law. I would once again emphasize what has often been said before, that 'public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place', (per Danckwerts LJ in *Bradbury v London Borough of Enfield* [1967] 3 All ER 434 at p 442).

A *declaration* is an all purpose remedy and it is applied to '*a wide variety of cases in terms of subject matter*' (per Raja Azlan Shah Acting LP (as His Majesty then was) in *Dato Menteri Othman bin Baginda v Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 at p 31). It is a remedy developed by the courts of equity in England and in due course, it was adopted, refined and adapted by the common law courts. According to Woolf and Zamir, *The Declaratory Judgment* (2nd Ed), declaratory judgments play an important part in settling disputes between the parties in the context of private law. In essence, *declaratory judgments* would state the legal rights of the parties and in suitable cases the courts would supplement it with other remedies. But *declaratory judgments* merely state some existing legal position; it does not require anyone to do anything, and if anyone is to disregard it, *it will not open that individual to contempt (Webster v Southwark LBC* [1983] QB 698). Once the legal position has been pronounced by the court, it opens the door to other avenues. The successful party to a declaratory order would seek other remedies in order to give effect to that declaratory order.

It is germane to mention that declaration is a discretionary remedy and it varies from case to case. The courts have been vigilant in the past and would continue to be vigilant. The courts have refused to grant relief to speculators and busybodies and to those people who merely ask hypothetical questions (*Re Barnato* [1949] Ch 258; and *Harrison v Croydon London Borough Council* [1968] Ch 479). Parties who are interested in seeking *declarations* must have sufficient interests to advance. Lord Dunedin

in *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd* [1921] 2 AC 438 at p 448 aptly said that:

> The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, some one presently existing who has a true interest to oppose the declaration sought.

So long as the applicant for a declaration can show that he has some legal right of his own to advance, the court can make the necessary *declaration* which the applicant seeks. In *Gouriet v Union of Post Office Workers* [1978] AC 435 at p 501, Lord Diplock explained the situation in this way:

> But the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of any one else.

In the context of administrative law, a *declaration* is the best vehicle to utilize in order to obtain a remedy against ultra vires actions by government authorities of every kind. *Declarations* can also be obtained against ministers and government servants and even the government itself. Thus, if the court were to declare that the proposed action or an action that has been taken is unauthorized by and under the law, that would be the end of the matter. It concludes the matter, so to speak, between the parties thereto. If an applicant is dismissed from office, he can by way of a *declaration* insist that he still holds the job (*Ridge v Baldwin* [1964] AC 40). If the applicant's property is taken, he has his remedy by seeking a declaration and then obtain other legal remedies that flow from it. In my judgment, a declaration is the best way to settle disputes with government authorities because it does not constitute a threat or a compulsion, but, nevertheless, it is an effective remedy.

What are the virtues of a declaratory action? It gives relief before damage is caused and it clarifies the legal position of the parties (*Petaling Tin Bhd v Lee Kian Chan & Ors* [1994] 1 MLJ 657 at p 673). A public authority is known to obey the law and it is in this context that a *declaration* becomes useful. Even though a *declaration* has no coercive force, it will definitely undermine the enforceability of an administrative act. I did say that a *declaration* is an all encompassing remedy and this can be seen in the case of *Barnard v National Dock Labour Board* [1953] 1 All ER 1113. That was a case where a dock worker had been suspended for disobeying an order and he sought a *declaration* that his suspension was wrongful. As the case progressed, it transpired that the dock worker's suspension was null and void because the dock manager who had suspended him had no statutory power at all to suspend him. The court of the first instance granted the *declaration* that was sought since the time limit for seeking an order of certiorari had expired through no fault of the dock worker. On appeal, the Court of Appeal held that *declaration* might be awarded against a statutory tribunal as an alternative remedy to certiorari.

In the *Malaysian context*, there is a statutory flavour in the form of the Specific Relief Act 1950 ('the SRA'). Section 41 of the SRA enacts as follows:

> Discretion of court as to declaration of status or right
>
> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.
>
> *Explanation* — A trustee of property is a `person interested to deny' a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.
>
> *ILLUSTRATIONS*
>
> (a) *A* bequeaths his property to *B*, *C* and *D*, 'to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.' No such children are in existence. In a suit against *A*'s executor, the court may declare whether *B*, *C* and *D* took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.
>
> (b) *A* covenants that, if he should at any time be entitled to property exceeding $100,000, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The court may make the declaration.
>
> (c) *A* is in possession of certain property. *B*, alleging that he is the owner of the property, requires *A* to deliver it to him. *A* may obtain a declaration of his right to hold the property.
>
> (d) *A* bequeaths property to *B* for his life, with remainder to *B*'s wife and her children, if any, by *B*, but, if *B* die without any wife or children to *C*, *B* has a putative wife, *D*, and children, but *C* denies that *B* and *D* were ever lawfully married; *D* and her children may, in *B*'s lifetime, institute a suit against *C* and obtain therein a declaration that they are truly the wife and children of *B*.'

and it certainly gives the court a discretionary power to grant a declaration. It would be apparent that under s 41 of the SRA, the court will only make a *declaration* when the plaintiff has some legal right or legal position to advance. A *declaration* too can be sought under s 41 of the SRA in regard to the plaintiff's entitlement to a legal character or status or right to property. On the other end of the fence, there is O 15 r 16 of the Rules of the High Court 1980 ('the RHC') which gives a wider power to the court to issue a declaration and that order reads as follows:

> No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not consequential relief is or could be claimed.

According to *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177; and *Lim Cho Hock v Speaker, Perak State Legislative Assembly* [1979] 2 MLJ 85, the plaintiffs need only establish that their legal interests are peculiarly affected in the context of O 15 r 16 of the RHC.

So much for the law and I will allude to the law once again in the later part of this judgment. I must now narrate the facts behind the notice of motion in encl 3 as amended by encl 6.

Facts of the case

To galvanize the facts, I must refer to encll 2, 7 and 8.

In encl 2, both the applicants deposed that all the facts stated in the affidavit were true and it came from their own knowledge as well as from the letters or documents that were in their possession and/or given to them save as otherwise stated therein. Both the applicants were the co-administrators of the estate of the late Ungku Abdullah who was also known as Ungku Abdullah Temenggong Daing Ibrahim and that estate was in relation to a property located in Johor Bahru measuring 6 acres, 30 poles held under Geran 158, Lot 129, Bandaran Johor Bahru ('the property'). It was deposed that Ungku Abdullah died on 23 March 1893 leaving the said property in question. By way of petition for a letter of administration dated 26 June 1996, which was extracted on 13 January 1998, the Johor Bahru High Court vide Petition No 31–112–1995 appointed both the applicants, who were the lawful great grandchildren of the late Ungku Abdullah, as co-administrators of the estate of the late Ungku Abdullah. The petition for the letter of administration was exhibited as exh 'A-1' to encl 2 and I do not propose to reproduce it in this judgment. Suffice for me to say that the estate of the late Ungku Abdullah under the 'Schedule of the property of the abovenamed deceased' was the property in question. The *'faraid'* certificate issued by the kadi's office at Johor showed that there were 624 beneficiaries to the estate of Ungku Abdullah and that faraid certificate was exhibited as exh 'A-2' of encl 2. It was deposed that according to the endorsements on the title of the said property, the registered proprietor was, at all material times, none other than Ungku Abdullah. Both the applicants deposed that they were made to understand that the property in question was charged to a chettiar in 1890 by Ungku Abdullah who later died on 23 March 1893; and the said property was redeemed by the government in 1895. A copy of the letter dated 27 August 1972 emanating from the State Legal Adviser of Johor explained the status of the said property and that very letter was exhibited as exh 'A-3' of encl 2 and it was worded in the Malay language as follows:

> YM Ungku Ibrahim bin U Ahmad,
> MM 31142
> Balai Polis Di Raja,
> Kluang, Johor.
>
> Ungku,
>
> *Per: Menuntut bayaran ganti rugi atas Geran Melayu No 158 Bandar Johor Bahru*

Surat Ungku bertarikh 22 Ogos 1972 telah patik terima.

2. Patik dukacita menyatakan bahawa setelah patik siasat perkara ini, patik dapati tanah tersebut telah menjadi hak kerajaan. Almarhum Ungku Abdullah telah menggadaikan tanah itu kepada seorang chetti dalam tahun 1890, dan pada 23 Mac 1893 telah mangkat. Dalam tahun 1895 kerajaan telah menebus gadaian itu. Kerajaan telah mengambil alih tanah itu menjadi hak kerajaan dan semenjak dari itu tidak ada apa-apa tindakan di ambil untuk meminta balik tanah itu daripada kerajaan.

3. Di masa ini tindakan mahkamah ke atas kerajaan tidak boleh di ambil oleh kerana tindakan-tindakan itu akan dihalang oleh undang-undang batasan guaman (limitation).

Yang ikhlas,

tt
(Mohd Eusoff bin Chin)
Penasihat Undang-Undang Negeri, Johor

It appeared from the tenor of the letter from the State Legal Adviser of Johor that the fate of the beneficiaries of the estate of Ungku Abdullah had been determined by the law of limitation. But was this really so? I shall revert to this nagging question in the later part of this judgment. In the meantime, I will continue to narrate the facts of the present case. Both the applicants further deposed that the said property had been acquired by the Johor State Government under s 54 of the Enacment ('the Enactment') vide CL&M 18/1932 dated 24 October 1950, CL&M 226/1950. The letter from the State Legal Adviser of Johor dated 29 June 1998 enclosing the details of the search at the land office was quite interesting and it was exhibited as exh 'A-4' of encl 2. That letter from the State Legal Adviser of Johor once again alluded to the law of limitation and for the very first time the land office search showed that the said property was acquired under s 54 of the Enacment. The letter from the State Legal Adviser of Johor dated 29 June 1998 was worded in the Malay language and it reads as follows:

Tetuan Lim & Hooi,
Third Floor, UMNO Building,
Jalan Segget,
80000 Johor Bahru.

Tuan,

Tuntutan Bayaran Pampasan Dan/Atau Gantirugi Atas Geran Melayu No 158 Lot 129 Bandar Johor Bahru

1 Kami merujuk kepada surat tuan bertarikh 15 Mei 1998 mengenai perkara tersebut di atas.

2 Adalah dimaklumkan bahawa berdasarkan kepada rekod kami, Almarhum Ungku Abdullah telah menggadaikan tanah tersebut di atas kepada seorang Chetti dalam tahun 1890 dan Almarhum telah mangkat pada 23 Mac 1893. Tanah tersebut telah *ditebus oleh kerajaan* dalam tahun 1895 dan seterusnya kerajaan telah mengambilalih tanah tersebut menjadi hak kerajaan pada 24 Oktober 1990.

3 Melalui Warta GN 386 bertarikh 10 Mei 1951, tanah tersebut telah dijadikan rizab untuk 'Telecom Exchange Building maintained by the Controller of Telecoms Johor.'

4 Ingin kami maklumkan juga bahawa tindakan terhadap kerajaan tidak boleh diambil kini kerana dihalang oleh Akta Sekatan Masa (Limitation Act).

Sekian, terima kasih.
'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

tt
(Abdul Rasid bin Sudin)
bp Penasihat Undang-Undang Negeri, Johor

while the search at the land office revealed the following details (see exh 'A4' of encl 2):

Pejabat Tanah dan Galian Negeri Johor
Tarikh Carian: 28 Mei 1998 No Siri: 4028
T/t Penyelia: Tt (Tidak Jelas)
Maklumat Carian Hakmilik Muka: 1

Butiran Hakmilik:

1 Daerah: Johor Bahru
2 Mukim: Bandar Johor Bahru
3 No Hakmilik: Geran Melayu No 158
4 No Lot: 129
5 Kategori Tanah: Perseorangan
6 Pajakan: Tidak Habis Tempoh Tidak
7 Keluasan Tanah: 6e or 30 Polesmeter Persegi
8 Cukai Tahunan: Tiada
9 Status Tanah: Geran Melayu
10 Jenis Guna Tanah: Bangunan
11 Syarat Nyata: Tiada
12 Sekatan Kepentingan: Tiada
13 Tarikh Hakmilik Didaftarkan: 4 Haribulan Rabi'elakhir 1297 (1877)
14 Tarikh Mula-mula Diberi Milik: Seperti di atas
15 No Hakmilik Asal: Yang Mulia Ungku Abdullah dikenali juga sebagai Ungku Abdullah bin Temenggong Daing Ibrahim.
16 No Hakmilik Akhir Sekali:

Tanah ini telah diambilalih oleh Kerajaan Negeri Johor di bawah s 54 kepada Land Enactment melalui CL&M 18/1932 bertarikh 24 Oktober 1950 CL&M 226/1950.

By way of a *gazette* notification dated 10 May 1951, the property in question was reserved for a public purpose and that *gazette* notification, as seen in exh 'A-5' of encl 2, explained the situation in this way:

Federation of Malaya Government Gazette Johor [May 10, 1951]
Reservations of Land for Public Purposes

No 386 — In exercise of the powers conferred upon him by s 10 of the Land Enactment, the Commissioner of Lands And Mines, Johor, hereby declares that the parcel of land, situated in the Township of Johor Bahru, described in the sch hereto, and delineated upon plan No 22257 deposited in the Survey Office, Johor Bahru, is reserved for a public purpose, to wit, a government building, to be maintained by the Controller of Telecommunications, Johor, and his successors in office.

Dated at Johor Bahru, this 23 April 1951. [RCJ 402/46; CLM 226/50; DO JB (L) 2358/50.]

Raja Sulaiman bin Raja Haji Bot,
for JSH CUNYNGHAM-BROWN, MCS,
Commissioner of Lands and Mines, Johor.

And it seemed, as deposed by both the applicants, that the Johor State Government had acquired the said property without informing and without paying any compensation and/or damages to the registered proprietor of the said property or to the surviving beneficiaries of the late Ungku Abdullah. It was further deposed that the state government had acquired the said property and had transferred certain portions of the said property to the Federal Government to build the Telecoms department. Both the applicants had sought confirmation from the Telecoms department in regard to the take over of the said property by way of a letter dated 26 August 1998 as seen in exh 'A-6' of encl 2 and that letter was worded in this fashion:

Ungku Sulaiman bin Abdul Majid dan
Ungku Ahmad bin Othman,
No 211, Jalan Persisiran Perling Satu,
Taman Perling,
81200 Johor Bahru.
26 Ogos 1998

Pengurus,
Pengurusan Hartanah,
Telekom Malaysia Berhad (128740 – P),
Property Operations,
Lot 1, Seksyen 17,
Jalan Persiaran Jubli Perak,
40000 Shah Alam,
Selangor Darul Ehsan (UP: Tuan Haji Idris Raya bin Mustaffa)

Tuan,

Per:Pengesahan tanah yang diduduki oleh Telekom (M) Bhd di Bukit Timbalan Johor Bahru

Rujukan: (A) Perjumpaan antara Haji Idris/U Sulaiman pada 26 Mac 1998
(B) Perbualan talipon Haji Idris/U Sulaiman pada 26 Ogos 1998

Sukacita iaitu lanjutan kepada perjumpaan kita pada 26 Mac 1998 dan perbualan melalui talipon pada 26 Ogos 1998 harap dapat kiranya pihak tuan mengesahkan perkara tersebut di atas seperti berikut:

a) Disahkan iaitu tanah seluas 2E 1R 9P Lot No 2962 adalah sebahagian dari Ekarage yang ada di dalam Geran Melayu No 158 Lot No 129 luasnya 6E OR 30P. Tanah itu adalah Tapak Bangunan Ibu Pejabat Telekom Malaysia Berhad di Johor Bahru telah diserahkan kepada Kerajaan Persekutuan oleh Kerajaan Negeri Johor dengan tiada apa-apa pembayaran dibuat oleh kedua-dua belah pihak Kerajaan.

b) Disahkan juga iaitu tanah seluas 3447 M2 – Geran No 29400 – Lot No 8261 HS(D) 27676 bertarikh 21 April 1977 adalah sebahagian dari Ekarage yang ada di dalam Geran Melayu No 158 Lot No 129 dan luasnya 6E OR 30P. Tanah ini adalah Tapak tambahan di sekeliling Bangunan Ibu Pejabat Telekom Malaysia Berhad di Johor Bahru tetapi tanah ini telah dibeli oleh Kerajaan Persekutuan dan pembayaran telah dibuat kepada Kerajaan Negeri Johor. Jumlah banyaknya tidak pula diketahui.

Oleh yang demikian sukacita harap dapatkan jawapan yang segera disampaikan kepada pihak kami untuk urusan kami seterusnya.

Kerjasama tuan sangat dihargai.

Sekian, terima kasih.

Yang benar,

tt
(Ungku Sulaiman bin Abdul Majid)

tt
(Ungku Ahmad bin Othman)
Pentadbir dan Pentadbir bersama
Harta Pesaka
Ungku Abdullah Temenggong Daing Ibrahim.

The response from the Telecoms department was by way of a letter dated 28 August 1998 and it confirmed what was sought to be confirmed, and that letter was worded in this way:

TELEKOM MALAYSIA

Ruj Kami: THSC 7500 Johor 28 Ogos 1998

Ungku Sulaiman bin Abdul Majid dan Ungku Ahmah (d) bin Othman
211 Jalan Persisiran Perling Satu
Taman Perling
81200 Johor Bahru

Tapak Ibusawat TM di Johor Bahru

Surat tuan bertarikh 26 Ogos 1998 mengenai perkara di atas adalah dirujuk. Berikut adalah ulasan dari kami:

1 Tanah seluas 2e 1r 9p lot 2962 adalah tanah rizab persekutuan di bawah Fasal 166(4) Perlembagaan Malaysia yang dipajakkan kepada Telekom Malaysia. Tanah ini dikawal dan diguna oleh Kerajaan Persekutuan untuk tujuan persekutuan seperti mana yang termaktub dalam Perlembagaan.

2 Tanah lot no 8261 Geran no 29440 adalah tanah milik Pesuruhjaya Tanah Persekutuan (PTP) yang diberimilik oleh Kerajaan Negeri dengan PTP membayar premium yang tidak diketahui jumlahnya kepada Kerajaan Negeri.

Sekian, terima kasih dan salam hormat.

tt
Idrisraya Mustaffa
Pengurus
Pengurusan Hartanah
sk: Pengurus Teleharta Johor

Both the applicants deposed that they were advised by their counsel by the name of Mr Teh Poh Teik and they verily believed that the acquisition of the said property by the state government under s 54 of the Enacment was without basis and not valid in law. It was deposed that the state government was not vested with the power under s 54 of the Enacment to acquire the said property without the knowledge of the registered proprietor and the beneficiaries thereto. Both the applicants then deposed that they now claimed from the State Government of Johor for the return of the said property; and in the event that this could not be done, both the applicants claimed from the State Government of Johor compensation and/or damages to be accorded to them together with the other beneficiaries whose rights have been denied. Both the applicants admitted that there was delay in their claim against the Government and they elaborated further. They said that since the Government had acquired the said property, no action was initiated for the return of the said property because at the material time, the immediate beneficiaries did not know who held the land title to the said property upon the death of Ungku Abdullah. Both the applicants further deposed that they verily believed that the beneficiaries were financially ill disposed and were reluctant to obtain probate on Ungku Abdullah's assets. Of crucial importance, it was deposed that at that time almost everyone was afraid of His Royal Highness Sultan Ibrahim Ibni Sultan Abu Bakar. Members of the royal family who had received pensions from the royal coffers were afraid that His Royal Highness Sultan Ibrahim Ibni Sultan Abu Bakar would revoke their royal pensions that were due to them. It was deposed and it was common knowledge that members of the royal family were on several occasions threatened that their royal pensions which they received would be revoked if they were to do anything that would incur the wrath of His Royal Highness. Such was the fear that was felt by members of the royal family. I would not do justice to the parties if the averments of both the applicants at paras 14 and 15 of encl 2 were not reproduced. For ease of reference, I shall now reproduce these two paragraphs in their original language:

> 14 Tuntutan kami terhadap kerajaan ini adalah lewat dan semenjak kerajaan mengambil alih tanah tersebut tidak ada apa-apa tindakan diambil untuk meminta balik tanah itu daripada kerajaan kerana pada masa itu waris-waris yang rapat tidak tahu siapa yang memiliki suratmilik tersebut setelah tuanpunya tanah meninggal dunia.
>
> 15 Kami juga percaya bahawa waris-waris tersebut tidak berkemampuan dan tiada yang mahu mengusahakan cara mengambil kuasa atas harta si mati. Pada masa itu hampir semua orang takutkan baginda DYMM Sultan Ibrahim Ibni Sultan Abu Bakar. Lebih-lebih lagi kerabat-kerabat baginda yang telah menerima pencen bulanan kerabat takutkan baginda

DYMM Sultan akan menarik balik pencen kerabat mereka. Pada masa itu adalah juga diketahui bahawa mereka telah beberapa kali 'diugut' bahawa pencen mereka akan ditarik balik sekiranya mereka melakukan sesuatu yang akan mengakibatkan ketidakpuasan baginda DYMM Sultan.'

That, in the original Malay text, was the sting of the averments of both the applicants. It was further deposed by both the applicants that since 1971, the beneficiaries had engaged the services of lawyers to advance their claim against the respondents but unfortunately no positive steps were undertaken by the lawyers in this direction. All the correspondences by the lawyers were collectively marked as exh 'A-7' of encl 2 and I will now endeavour to reproduce them. The first letter was dated 31 October 1971 and it was from Messrs Hassan Yunos & Co addressed to the Director of Lands And Mines, Johor Bahru and it was worded in this way:

Per: Menuntut bayaran ganti rugi atas Geran Melayu No 158, Bandar Johor Bahru

Kami mewakili mereka yang tersebut di bawah ini:
YM Ungku A Majid bin Ibrahim, YM Ungku Hejah Rugayah bte Ibrahim, YM Ungku Maimunah bte Ibrahim, YM Ungku Zabedah bte Ali, YM Ungku Bukit bte Ali, YM Ungku Ara bte Ali, YM Ungku Sonit bte Mohamed, YM Ungku Esah bte Hussin, YM Ungku Radwan bte Ali, (dan) YM Ungku Hawa bte Ali.

Pelanggan kami tersebut di atas ialah cucu kepada Allayarham Yang Mulia Tengku Abdullah bin Temenggong Ibrahim.

Kami telah diarahkan menulis kepada tuan mengenai tanah tersebut diatas dengan tujuan agar kerajaan menentukan dengan khusus kedudukan tanah tersebut.

Menurut bukti yang tertulis didalam geran tersebut, tuan punya tanah didaftarkan ialah Yang Mulia Ungku Abdullah. Walau bagaimanapun ada tercatat di sebahagian belakangnya seperti berikut:

This is now State Land under s 54 of the Land Enactment. Vide CL&M 18/1932. Dated this 24 October 1950, CL&M 226/1950'.

Seksyen 54 yang dimaksudkan di atas berbunyi:

(i) Any person claiming any estate or interest in land under this Part may, at any time, if his claim cannot be properly dealt with under s 42, apply to the Commissioner for an order that any register, book or journal kept at any Land Office under this Enactment shall be rectified, or that any entry may be made or interpolated in any such register, book or journal or that any entry therein may be cancelled: and the Commissioner may either refuse such application, or, if satisfie(d) as to the justice of the case, may make such order in reference thereto as he may think fit.

(ii) The Collector and every other person affected by such order of the Commissioner shall obey the same upon being served with a copy of such order.

(iii) Any person aggrieved by any refusal or order of the Commissioner under subsection (i) may appeal to the court: provided that such appeal shall not be admitted after the expiration of thirty days from the date of the decision appealed against.

(iv) No court other than the Supreme Court shall have any jurisdiction in matters provided for by this action.

Menurut fahaman kami maksud s 54 diatas ialah satu cara membetulkan kesilapan yang tercatat di dalam buku pendaftaran tanah dan khususnya tindakan yang boleh diambil sekiranya terdapat satu kesilapan atau kesalahan yang tertentu.

Ternyata di sini, tidak ada termaktub kuasa yang membolehkan kerajaan mengambil tanah tersebut tanpa pengetahuan ampunya tanah atau warisnya.

Bagaimanakah tanah tersebut boleh dijadikan state land di-bawah seksyen tersebut? Kami tidak nampak bagaimana kerajaan boleh mengambil tanah tersebut dan dengan tidak memberi peluang kapada ampunya terhadap tanah tersebut.

Setahu kami, tanah tersebut telah pun dipindah milik oleh Kerajaan Negeri Johor kapada Kerajaan Persekutuan di mana sekarang telah dibina Jabatan Telecoms.

Sehingga hari ini tidak ada apa-apa bayaran yang dibuat oleh kerajaan kapada ampunya tanah atau keluarga-keluarganya.

Yang benar,

Salinan kapada:

(1) Dato Setia Usaha Kerajaan Johor,
Johor Bahru.

(2) Penasihat Undang-Undang Negeri Johor,
Johor Bahru.

The second letter was from *Messrs Shafie & Mohan* dated 23 August 1994 and it was jointly addressed to the Johor State Secretary and to the Director of Lands And Mines, Johor Bahru and it was couched in these terms:

Per: Tuntutan ke atas Hartanah Geran Melayu No 158, Johor Bahru

Kami mewakili waris-waris Allahyarham Ungku Abdullah Ibni Almarhum Temenggung Ibrahim, pemilik berdaftar hartanah yang dipegang di bawah Geran Melayu No 158 Johor Bahru ('Hartanah tersebut'). Kami diarahkan oleh anakguam kami, iaitu cicit-cicit kepada Allahyarham Ungku Abdullah Ibni Almarhum Temenggung Ibrahim, seperti berikut:

(i) bahawa Almarhum Ungku Abdullah adalah pada setiap masa material tuanpunya berdaftar Hartanah tersebut.

(ii) baru-baru ini, anakguam kami mendapati bahawa Hartanah tersebut telah diambil alih oleh Kerajaan Negeri Johor kononnya di bawah s 54 kepada Land Enactment melalui CLM 18/1932 bertarikh 24 Oktober 1950, CL&M 226/1950, tanpa memberitahu dan tanpa apa jua pampasan kepada tuanpunya berdaftar Hartanah tersebut atau waris-warisnya yang masih ada.

Setelah membuat rujukan dan semakan dokumen-dokumen berkenaan kami sebagai peguamcara kepada waris-waris tersebut berpendapat bahawa pengambilan Hartanah tersebut oleh Kerajaan Negeri Johor melalui s 54 yang tersebut di atas, adalah tidak berasas dan tidak sah di sisi undang-undang kerana tidak ada kuasa yang termaktub di bawah s 54 tersebut yang membenarkan atau membolehkan Kerajaan Negeri Johor mengambil Hartanah tersebut tanpa pengetahuan tuanpunya Hartanah tersebut atau waris-warisnya.

Kami kini diarahkan untuk menuntut daripada Kerajaan Negeri Johor, yang mana kami dengan ini berbuat demikian, bahawa Kerajaan Johor hendaklah menyerahkan Hartanah tersebut kepada anakguam kami atau memberi pampasan dan gantirugi kepada anakguam kami yang telah dinafikan hak mereka.

Dalam hubungan ini di harap pihak tuan dapat memberi maklum balas dalam tempoh empat belas (14) hari dari tarikh surat ini atau menghubungi pihak kami dengan cadangan-cadangan penyerahan balik Hartanah tersebut kepada anakguam kami atau pampasan dan gantirugi yang akan dibayar kepada anakguam kami.

AMBIL PERHATIAN bahawa sekiranya pihak kami tidak menerima cadangan penyerahan balik Hartanah tersebut kepada anakguam kami atau pampasan dan gantirugi seperti yang dituntut di atas di dalam tempoh masa yang ditetapkan, kami telah di arahkan untuk memulakan prosiding undang-undang terhadap semua pihak yang berkenaan termasuk pihak tuan untuk mendapatkan penyerahan balik Hartanah tersebut atau pampasan dan gantirugi yang berpatutan daripada pihak tuan dan dalam keadaan sedemikian pihak tuan akan juga menanggung segala kos dan perbelanjaan guaman yang diakibatkan kepada anakguam kami.

Sekian terima kasih.

Yang benar,

tt
sk Anakguam

and the response from the office of the Director of Lands And Mines, Johor Bahru to Messrs Shafie & Mohan was by way of a letter dated 23 September 1994 and it simply said that the matter had been referred to the State Legal Adviser of Johor. The third letter was from Messrs Lim & Hooi and it was addressed to the state legal adviser and it was dated 23 January 1998. The fourth letter was also from *Messrs Lim & Hooi* and it was dated 26 February 1998, which was specifically addressed to the Director of Lands And Mines, Johor Bahru. Both the third and the fourth letters were worded in a similar language and it was an exact replica of one another and for convenience I shall reproduce the contents of the third letter which was worded in this way:

23 Januari 1998

Per: Menuntut Bayaran Pampasan dan/atau Gantirugi atas Geran Melayu No 158 Lot 129, Bandar Johor Bahru

Kami mewakili YM Ungku Sulaiman B Abd Majid dan YM Ungku Ahmad B Othman, Pentadbir dan Pentadbir bersama harta pesaka Ungku Abdullah yang dikenali juga sebagai Ungku Abdullah Temenggong Daing Ibrahim, simati. Salinan geran surat kuasa yang bertarikh 26 Jun 1996 dilampirkan untuk rujukan tuan.

Mengikut bukti yang tercatit dalam Geran 158, tuanpunya tanah yang berdaftar adalah Yang Mulia Ungku Abdullah. Tetapi pada 24 November 1950 melalui CL&M 226/1950, kerajaan telah mengambil alih tanah tersebut dan telah dipindahmilik oleh kerajaan Negeri Johor kepada Kerajaan Persekutuan untuk membina Jabatan Telekom.

Kami telah dimaklumkan oleh anakguam kami bahawa kerajaan tidak membayar apa-apa pampasan dan/atau gantirugi kepada waris-waris Ungku Abdullah apabila mengambil alih tanah tersebut.

Kami juga telah diarahkan oleh anakguam kami untuk menuntut pampasan dan/atau gantirugi terhadap pengambilan tanah tersebut oleh kerajaan.

Oleh yang demikian, kami berharap pihak tuan dapat membantu kami untuk menyiasat tuntutan anakguam kami.

Sekian terima kasih.

Yang benar,

tt
sk pelanggan

Finally, both the applicants deposed that they sincerely believed that they, together with the other beneficiaries, were entitled to receive compensation and/or damages in regard to the said property and for these reasons both of them craved for order in terms of their application in encl 3 as amended in encl 6.

Shubanah bte Yusuf ('Shubanah'), an assistant director of Lands And Mines, State of Johor responded by way of an affidavit in encl 7 and there (at paras 4 and 5 of encl 7) she categorically stated and she verily believed that the said property had been charged by the late Ungku Abdullah to a chettiar in 1890 and the said property had been redeemed by Messrs Peterson Simmon & Co on behalf of the Johor State Government for the sum of $8,000 in 1895 after the death of Ungku Abdullah. Shubanah deposed that since 1895, the land title to the said property was kept by the State Government of Johor until a lawyer from Messrs Rodyk and Davidson alluded to the fact that in 1908 the said property had become the ownership of the government since more than 12 years had lapsed wherein the said property was held by the government without any claim by anyone. Shubanah referred to the minutes written by one A Glencross, the then Commissioner of Lands And Mines, Johor dated 27 December 1953 which was exhibited as exh 'SY-1' of encl 7 to support her averments and that minutes were worded in this way:

Ref: CLM 18/32 (Conf)

Malay Grant No 158

This is a very old matter indeed. The land (Malay Grant 158) was alienated to Ungku Abdullah bin Ibrahim in 1877. It has been in the possession of (the) government since 1895. How it came into the possession of (the) government is set out in the following minutes in SS3898/31:

Dato Private Secretary,

Saya baru dapat dari Pejabat Tanah Grant Tanah itu No 158 dan lain-lain kertas yang berkenaan tersimpan dalam sebuah peti besi lama di pejabat itu, bersama ini saya kirimkan kertas-kertas itu dalam suatu sampul bagi lihatan Dato' Grant yang tersebut itu nampaknya sudah tergadai oleh Almarhum Ungku Abdullah kepada seorang Cheti dalam tahun 1890 dan ditebus oleh Peterson Simmon & Co bagi pihak Kerajaan

Johor dengan membayar $8,000 dalam tahun 1895 kemudian daripada telah mangkat Almarhum Ungku Abdullah itu.

Semenjak dari itu tertinggallah grant itu dalam simpanan kerajaan dan dalam tahun 1908 barang kali dengan sebab ada sebarang tuntutan lawyer Rodyk dan Davidson menyatakan yang tanah itu terserah jadi hak dan milik kerajaan kerana telah lebih daripada 12 tahun dalam pegangannya dan tiada boleh dituntut oleh siapa-siapa lagi. Pada masa ini sekarang sudah jadi 37 tahun lama.

Sungguhpun demikian itu barang kali juga Dato suka hendak berdatang sumbah kalau-kalau ada lempah ahsan ke bawah Duli Yang Maha Mulia di atas anak-anak Almarhum Ungku Abdullah yang bermohon ini.

Ind/-MS
State Secretary
12 January 32.

2 The Legal Adviser at that time was consulted and on 21 January 1932 gave his opinion that 'the heirs have no claim in law or equity and can only be granted anything as an act of grace.' The matter went before Executive Council and the claim was rejected.

3 The matter was brought up again in 1933 and again went to Executive Council. The claim was again rejected.

4 In 1949 the claim was brought up again by various grandchildren of Ungku Abdullah and you replied that this matter had been settled long ago and nothing could now be done about it.

5 In 1950 when it was decided that the Telecoms building here be sited, Mr Cunyngham-Brown endorsed on the Malay Grant as follows: 'This is now state land under s 54 of the Land Enactment vide CLM 18/1932'. No formal enquiry appears to have been held when this was done.

6 The new Telecoms building is going up on this site.

7 I think that the applicants should be told that this matter was decided more than 30 years ago and cannot now be reopened but I suggest you consult the legal adviser as to this before referring to Executive Council.

8 I attach my paper CL&M Conf 18/32 under confidential cover should it be wanted for reference by the legal adviser.

tt (A Glencross)
Commissioner of Lands & Mines,
Johor.

27 December 1953.

The minutes of A Glencross revealed that the said property had become state land under s 54 of the Enacment without any formal enquiry being held. It also revealed that the Telecoms building was being built on the said property at that time. The then State Legal Adviser of Johor was consulted and on 21 January 1932 gave his opinion that 'the heirs have no claim in law or equity' to the said property. Without a doubt, the minutes of A Glencross were a damper to the applicants. Everything seemed to be a forgone conclusion. But was this so? I will not venture an answer at this point of time and I shall continue narrating the facts through the affidavit in reply of

Shubanah. She reiterated and laid stress on the minutes of A Glencross and it was her stand that the said property was acquired by the Johor State Government in 1932 after the Johor State Government had redeemed the property on the order of His Royal Highness the Sultan, and thereafter the property together with the building thereto were vested in the Johor State Government. She focussed her attention to and referred to the minutes found in exh 'SY-2' of encl 7. The minutes were written by several personalities and it would be ideal to reproduce them verbatim in this judgment, and I will now do so:

SS

Illegible:
Please note
Sgd for (Illegible)
COMMISSIONER OF
LANDS & MINES
3 January 51
Recd: 3 January 51
Sgd (Illegible)

I recommend at encl 25 & attach
a sureprint of the area in question.
2. It comprises the whole of Malay
Gt 158 Johor Bahru Town, which
was acquired by Govt in 1932,
the original owner Ungku Abdullah
having died whilst the land remained
charged to a chettiar. Govt redeemed
the charge on HH's order and both land
and buildings now vest in the state.
Sd SSH (Cunyngham-Brown)
CL&M 3 November
RCS 402/46 returned on … 4-X1-50

CL&M
Noted thank you.
Sgd for (COLLECTOR
OF LAND REVENUE)
4 January 51
Ltr from CLR JB
CLR JB – Re – (8) Yes.
Please proceed under
s 10 of LE
Sgd for
COMMISSIONER OF
LANDS & MINES
15 January 51

29 November
20 December
31 December
Copied from RCS 402/46
(15) EXECUTIVE COUNCIL
20 December 1950
Initial Raja H Omar 23 December 50

CLM:
Seen thank you.
2. I shall take the
necessary action.
Sgd Abdullah
for CLM 15 January 51
(9) From CLR JB 17-3/51
(9A) D/E.N/

CL&M:
Please Note (34)
SS.
Noted. Thank you.
Sgd M Yusof
for CL&M 3 January 51
RCS 402/46& 55.651/49 attch
Encld 3 January 51

CS:
Please check the
particulars.
Sgd CL&M Johor
10/4

and the minutes alluded to s 10 of the Enacment and that section enacts as follows:

> The Commissioner may from time to time reserve, by notification in the *Gazette*, any State lands which in his opinion are required for any public purpose or for a residential reserve. Such notification shall fully describe the land, the public or other purpose, and the terms on which it is reserved, and shall be published in two consecutive issues of the *Gazette*.

and it relates to a reservation of a state land by way of a notification in the *Gazette*; and it refers to the said property as a state land. Was this really so?

She verily believed and it was part and parcel of her case that on the strength of the relevant law at that material time — referring to the 1890 legal position, the redemption of the said property by the Johor State Government for the sum of $8,000 to the chettiar on the order of His Royal Highness could result in the said property being vested in the name of the Johor State Government. By way of an example she exhibited an endorsement found in 'Grant No 7 Bandar Johor Bahru' as seen in encl 7, exh 'SY-2A' which was worded as follows:

> Vide Manuscript Document dated 10 of June 1893 Registered No 183 on the 6 of Muharram AH 1311 in which there is a declaration by Dato Andak bin Heng that the land had become vested in HH Sultan Abubakar in consideration of the latter paying his debt of which the said land formed part of the security and that he had no more claim whatever to the said land.

and she used that example as a leverage to emphasize her point that the said property had been vested in the Johor State Government on the order of His Royal Highness the Sultan of Johor. I must at once respond and say that that example merely served as a mere example and nothing else because it related to a different property entirely. Shubanah deposed further at para 6 of encl 7 and she verily believed that the Johor State Government as a party having an interest on the said property had utilized s 54 of the Enacment by applying to the Commissioner of Lands And Mines, Johor for an order that the register be rectified and an endorsement be made for the said property to be acquired by the Johor State Government. In pursuance of that application, she deposed further at para 7 of encl 7 to the effect that the Commissioner of Lands And Mines Johor had made an endorsement on the register document of title on 24 October 1950 which showed that the said property had become state land under s 54 of the Enacment as reflected in file number CLM 18/32. The register document of title of the said property in the jawi script was exhibited as exh 'SY-3' of encl 7, while the file search as per exh 'SY-4' of encl 7 revealed the following salient particulars:

(Salinan)

TITLE-Malay Grant No 158
Plan- No 4
LOT No- Keping yang ke-22
AREA- 6A OR 30 Poles
LOCALITY- Township of Johor Bahru
DISTRICT- Johor Bahru

Registered Owner - Yang Mulia Ungku Abdullah, Johor
Date Ownership - Sinde 4 Rabil'akhir, 1297
Encumbrances -(1) Nil

(2) This title has been cancelled
ENDORSEMENT- (This is now State Land under s 54 of the Land Enactment, vide CL&M 18/1932
Dated this 24 October 1950.
CL&M 226/1950)
Seal: CL&M
24 October
Issue copy not produced.
Peta No 4
Bandar Johor Bahru
Keping yang ka-22
Bakal Jalan Trus.

ARP
6030

Shubanah further deposed at para 8 of encl 7 and she verily believed that the redemption of the said property to the tune of RM8,000 by the Johor State Government to the chettiar was at par with the value of the charge that was placed on the said property at that material time, and now it was said that it was unwise for the Johor State Government to pay any compensation or damages to the applicants or to the beneficiaries of the late Ungku Abdullah. She further deposed at para 9 of encl 7 that the said property had been reserved by way of a *gazette* notification vide GN 386 dated 10 May 1951 as a '*Telecom Exchange Building Maintained By The Controller Of Telecoms Johor*' and such *gazette* notification was said to be valid in law and that the reservation of the said property for that specific purpose could not be stopped as provided for under the Federal Constitution. It was deposed further by her at para 10 of encl 7 to the effect that she verily believed that the beneficiaries of the late Ungku Abdullah knew that the said property had been redeemed and acquired by the Government and that the beneficiaries of the late Ungku Abdullah had made a claim on the said property as early as 1908 and all their claims were unsuccessful. She deposed that legal proceedings should have been instituted as early as 1908. Interestingly, she enclosed a letter from the Director of Lands And Mines Johor which was addressed to Ungku Ibrahim bin Ungku Ahmad and that letter marked as exh 'SY-5' of encl 7, in its original text, was worded in this fashion:

PEJABAT
PENGARAH TANAH DAN GALIAN
JOHOR
Peti Surat 718
Johor Bahru, 18 Julai 1975
Bil (15)dlm PTG 255/71

Yang Mulia,
Ungku Ibrahim bin Ungku Ahmad,
MM 31142, Balai Polis,
Kluang.

YM Ungku,

Perkara: Pembahagian Harta Pesaka.

1 Merujuk kepada surat Ungku bertarikh 9 April 1975 yang dialamatkan kepada YAB Datuk Menteri Besar, Johor, adalah hamba Ungku dengan hormat taadzim diarah memaklumkan bahawa satelah disiasat dengan telitinya, didapati tidak ada apa-apa lagi tindakan yang boleh diambil didalam perkara yang Ungku kemukakan itu.

2 Mengikut rekod di pejabat ini, dalam tahun 1890 Silah Ungku Abdullah telah menggadaikan tanah yang berpegang dengan MG 158 kepada seorang ceti dan pada 23 Mac 1893 beliau telah mangkat. Dalam tahun 1895 kerajaan telah menebus gadaian itu dan mengambil alih hakmilik tanah tersebut.

3 Dalam tahun 1908, satu tuntutan telah dikemukakan kepada kerajaan diatas tanah tersebut dan ditolak dengan sebab telah melebihi had 12 tahun yang dibenarkan di bawah Undang-Undang Batasan Guaman (Limitation Ordinance). Tuntutan-tuntutan yang serupa telah dibangkitkan lagi dalam tahun 1932, 1933, 1949 dan 1950 dengan mendapat keputusan yang sama iaitu ditolak.

4. Yang demikian terpulanglah kepada pihak Ungku dan waris-waris untuk mengambil apa-apa tindakan yang difikirkan dapat menyelesaikan perkara tersebut.

Adalah hamba Ungku dengan hormat
taadzim yang menurut perintah,

tt
(Fadzil b Mohd Noor)
bp PENGARAH TANAH DAN GALIAN,
JOHOR.

sk:
YB Setia Usaha Kerajaan,
Johor.
(Bil tuan: (4)dlm SUKJ 619/1-16)
Setiausaha kepada
YAB Datuk MB Johor.
(Bil MBJ(B)/12/74).
/Jama

In serious vein, Shubanah deposed at para 11 of encl 7 that she verily believed that the whole episode took place more than 100 years ago and that it was highly improper that the petition for a letter of administration dated 26 June 1996, wherein the Johor Bahru High Court had appointed both the applicants as the co-administrators of the estate of the late Ungku Abdullah could be used as a basis to advance the claim for the return of the said property which had previously changed ownership according to the law and the rule that were in existence then. For these reasons, Shubanah deposed that the claims of both the applicants were unjustifiable and it would cause

an injustice to the respondents since the latter had lost whatever proof and evidence to rebut the claims of both the applicants; and that whatever cause of action that might have existed, if any, should have been taken within a reasonable period of time. For these reasons, Shubanah prayed that the notice of motion in encl 3 as amended in encl 6 be dismissed with costs.

I must now proceed to examine the affidavit in rebuttal of both the applicants as seen in encl 8. By way of an introduction, both the applicants deposed that the facts alluded to in encl 8 were the truth based on the documents or the records that were given or obtained by them unless otherwise stated. They deposed once again that they were the co-administrators of the estate of the late Ungku Abdullah. They then focussed their attention to Shubanah's affidavit as seen in encl 7. They deposed that in relation to Shubanah's averments in paras 4 and 5 of encl 7, they said that the Johor State Government at that time had no power to redeem the said property without the consent of the registered proprietor and/or the consent of the beneficiaries. They deposed that without any instruction and/or consent, the redemption of the said property was wrong and invalid because the said property was owned by an individual. They also deposed that since the said property was taken or redeemed in an unlawful manner, it followed that ownership of the said property could not be vested in the Johor State Government notwithstanding that it was by order of His Majesty the Sultan. In relation to Shubanah's averments in paras 6 and 7 of encl 7, both the applicants deposed that the respondents wrongly relied on the provisions of s 54 of the Land Enactment 1935 (Enactment No 1) because that section was in relation to rectification of an entry in the register and not in relation to registration of ownership. In regard to para 8 of encl 7 of Shubanah's affidavit, both the applicants deposed that there was no consent of the registered proprietor and/or the beneficiaries to redeem the said property at the price of RM8,000. In regard to para 9 of encl 7, both the applicants averred that the *gazette* notification vide GN 386 dated 10 May 1951 which showed that the said property had been acquired by the Johor State Government was in reality invalid under the law as the procedures enumerated in the Enacment were not complied with. Both the applicants in responding to paras 10 and 11 of encl 7, categorically stated that their claims as co-administrators of the estate of the late Ungku Abdullah were not governed by the limitation period and such period had not expired at all. For the aforesaid reasons, both the applicants prayed for order in terms of the prayers in the notice of motion in encl 3 as amended by encl 6.

This was indeed an interesting case and I have set out, at great length, the facts in the relevant affidavits in order to piece together as a coherent whole the factual matrix of the present case. It would be correct to say that everything revolved on the said property and that property played a pivotal role in this interesting episode. The following facts were not disputed by the parties:

(1) That both the applicants were the co-administrators of the estate of the late Ungku Abdullah by way of a letter of administration that was extracted on 13 January 1998 even though it was dated 26 June 1996.

(2) That the estate of the late Ungku Abdullah comprised the property in question and on that property stood a building belonging to the Telecommunications department.

(3) According to the minutes of one A Glencross, the then Commissioner of Lands And Mines, Johor as per exh 'SY-1' of encl 7, the said property had a chequered history. That property was charged to a chettiar in 1890 by the late Ungku Abdullah and the same property was redeemed on behalf of the Johor State Government by Messrs Peterson Simmon & Co in 1895.

The Chettiar was a registered chargee and his position, once upon a time, in relation to the said property was indeed strong. By way of an analogy, reference should be made to the case of *Bank Bumiputra (M) Bhd v Mahmud bin Haji Mohamed Din (Datin Hajjah Salma bte Md Jamin, Intervener)* [1989] 1 MLJ 381, where the supremacy of a registered chargee was emphasized by Peh Swee Chin J (as he then was) and at p 382 of the report this was what his Lordship said:

> It was only too obvious to the court that the ground of the intervener's claim was one of priority over the charge in question as registered on the title which she had agreed to purchase by the sale agreement because she had bought the land long before the charge was registered, in other words, qui prior est tempore potior est jure, ie he who is earlier in time is stronger in law.
>
> Here, the chargee, being a registered chargee, had attained, as regards its registered interest, an indefeasible title against the world save for a few exceptions set out in s 340 of the National Land Code such as fraud, misrepresentation etc to which the chargee was a party or privy, and which did not apply to the facts of the instant case.
>
> When the exceptions in the said s 340 do not apply as they did not apply to the instant case, the supervening title would defeat a prior equitable right or interest: *Ong Chat Pang v Valliappa Chettiar* [1971] 1 MLJ 224. The chargee, to quote a familiar expression, had therefore succeeded in the scramble to get on the register and had therefore emerged victorious.

Again by way of an analogy, reference should also be made to the case of *Perwira Habib Bank (M) Bhd v Oon Seng Development Sdn Bhd* [1990] 1 MLJ 447. That was a case where the plaintiff chargee successfully applied for an order of sale of the charged land. Three of the defendants sought to oppose the order on the basis that as they had purchased part of the land, the order should not apply to their lands. However, Mohamed Dzaiddin J (now the Chief Justice of the Federal Court of Malaysia) held that there were no grounds to deny the application for an order of sale and this was what his Lordship said (see p 448 of the report):

> First, as bona fide purchasers for value, their interest cannot prevail over that of the plaintiffs, the registered chargee. Unless fraud is an issue (which it is not so here) and could be proved, the charge which had been legally registered becomes indefeasible (*Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors* [1983] 1 MLJ 81). Secondly, as the purchase agreement, in particular of the third defendant, contained an express condition that the lot was sold subject

> to an existing charge in favour of the plaintiffs, the interest of the purchaser who had expressly consented to the creation of the said charge cannot override the registered interest of the plaintiffs as chargee.

Continuing in a sympathetic mood, his Lordship Mohamed Dzaiddin J (now Chief Justice of the Federal Court of Malaysia) said at the same page in the last paragraph:

> In the light of the above, there is nothing this court can do except to sympathize with the predicament faced by these purchasers. Perhaps, the remedy available would be for these defendants to sue the first defendants for damages for breach of contract, ie the sale and purchase agreement.

But in the context of the present case, the chettiar as a registered chargee no longer had an interest on the said property as redemption was effected in 1895.

(4) The late Ungku Abdullah died on 23 March 1893.

(5) The *strong personality of His Royal Highness Sultan Ibrahim Ibni Sultan Abu Bakar* as alluded to in paras 14 and 15 of encl 2 viewed from the perspective of His Royal Highness's subjects. This was never challenged by Shubanah in her affidavit in reply in encl 7 and consequently the rigors of the law as alluded to in *Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287 must be brought to bear upon the respondents.

(6) That the said property was acquired by the Johor State Government under s 54 of the Enacment and no formal enquiry was held when this was done.

(7) That the said property by virtue of the *gazette* notification GN 386 dated 10 May 1951 was reserved for '*Telecom Exchange Building Maintained by the Controller of Telecoms Johor*.'

Three main issues were argued at great length by the parties. I must put on record my gratitude to both learned counsel who have endeavoured to submit on all the relevant and pertinent points in regard to the notice of motion in encl 3 as amended by encl 6. Miss Mary Jesmal Pereira of counsel for both the applicants and Mr Abdul Rasid bin Sudin, the Assistant to the State Legal Adviser, Johor, for both the respondents performed extremely well at the bar and they deserved to be commended in this judgment. The three main issues that were ventilated may compendiously be framed in these words:

(1) Whether the Johor State Government could redeem the said property through Messrs Peterson Simmon & Co without the prior consent and instructions of the beneficiaries of the late Ungku Abdullah and whether such redemption was in accordance with the law and/or valid in law?

(2) Whether the acquisition of the said property under s 54 of the Enacment vide CL&M 18/1932 dated 24 October 1950 and CL&M 228/1950 was null and void?

(3) Whether the law of limitation could be applied in the present case when the said property was acquired under the wrong section of the Enacment? A

I will now examine these three main issues in sequence.

The first issue B

For this exercise, I must repeat the salient facts of the whole case. I have to refer to the affidavit of Shubanah in encl 7 where at para 4 she deposed that in 1890, the said property was charged to a chettiar and later redeemed by Messrs Peterson Simmon & Co for the Johor State Government by paying a sum of RM8,000 in 1895 after the death of Ungku Abdullah. Why must C the redemption be carried out by a third party who was not even the registered proprietor of the said property? It must be recalled that the said property belonged to an individual in the person of the late Ungku Abdullah and that property was not owned by the Johor State Government. It would be apparent from exh 'SY-1' as exhibited in encl 7 that the said property — D which was Malay grant 158, was alienated to the late Ungku Abdullah in 1877. Exhibit 'SY-1' of encl 7 was a running commentary of the factual background to the whole case by one A Glencross, the then Commissioner of Lands And Mines, Johor. That running commentary in documentary form showed that the Johor State Government had directed and/or instructed their agent, Messrs Peterson Simmon & Co, to redeem the said E property from the chettiar without any prior consent and instructions from the beneficiaries of the late Ungku Abdullah. That redemption, in my judgment, was certainly done without the consent and/or instructions from the beneficiaries of the late Ungku Abdullah and that being the case, the redemption exercise was null and void in so far as it concerned the legal rights of the beneficiaries of the late Ungku Abdullah. In so far as the F chettiar was concerned, the redemption in the sum of $8,000 was good consideration for the release of the charge. It would also be apparent from exh 'SY-1' of encl 7, that from the time that the said property was redeemed by the Johor State Government, the land title was kept in the possession of the Johor State Government without the knowledge of the beneficiaries of the late Ungku Abdullah. Thus, it was not surprising that both the G applicants averred in their affidavit in encl 2 that they did not know who had kept the land title to the said property upon the death of Ungku Abdullah.

At this juncture, it would be pertinent to refer to s 68(ii) of the Enacment which enacts as follows: H

> In case default be made in payment of the principal sum, interest or periodical payment, or any part thereof thereby secured, or in the observance of any agreement expressed in any charge registered under this Part, and such default be continued for the space of one month, it shall be lawful for the chargee, by summons, to call the proprietor of the charged land before the court to show cause why the land subject to the charge should not be sold by public auction I under the direction of the court. If no cause be shown to the satisfaction of the court, it shall order a public sale of the said land to take place, under the

direction of an officer of the court at such place and time as shall appear most convenient.

and which clearly suggests that a third party who has no interest in the said property could not redeem that property. Any redemption undertaken by the third party, like the present case, would render that redemption invalid in so far as it concerned the beneficiaries of the late Ungku Abdullah. This was my judgment and I so hold accordingly.

The lawyer from Messrs Rodyk and Davidson in exh 'SY-1' of encl 7 had the audacity to advise that since the land title to the said property was in the possession of the Johor State Government for over 12 years, the said property was said to have become vested in the said government and that no other person could claim for the said property. That legal advice was certainly off tangent and it failed to take into account the provisions of the Enacment which was silent as to whether the Johor State Government could possess the said property after a period of 12 years.

Bluntly put, the stand of the respondents was quite simple. This was made known through the submissions of En Abdul Rasid Sudin. He emphasized that the matter relating to the redemption of the said property took place in 1895. He relied on the affidavit of Shubanah and he submitted that the said property was charged by the late Ungku Abdullah to the chettiar in 1890 and the said property was redeemed by Messrs Peterson Simmon & Co, on behalf of the Johor State Government by paying $8,000 in 1895; and that redemption exercise was undertaken after the death of the late Ungku Abdullah on 23 March 1893. He ingeniously argued that on these facts the provisions of the Enacment was not applicable and was not relevant simply because that the matter relating to the redemption of the said property took place in 1895. He submitted that the law which was applicable and which governed the redemption of the said property in 1895 was totally unclear. He alluded to exh 'SY-2A' of Shubanah's affidavit in encl 7 and he submitted that the sample of the endorsement found in Grant No 7 Township of Johor Bahru — which was a different piece of land from the said property before this court, served as a good example of the methods that were adopted at that time. He emphasized, by way of an example, that the endorsement found in 'Grant No 7 Township of Johor Bahru showed that the land held under Grant No 7 was vested in His Royal Highness Sultan Abu Bakar on the payment of the land owner's debt by His Royal Highness Sultan Abu Bakar in 1893 and he submitted that this was what had exactly happened to the said property in question. He then submitted that the said property was redeemed in 1895 by the Johor State Government on the order of His Royal Highness the Sultan and the said property became vested in the Johor State Government based on the method in existence then and this was, according to him, the method adopted in the 1890s. He rounded up by saying that in the absence of any law clearly applicable in Johor then, the methods adopted during that time should be used as a guidance in determining whether the actions taken by the respondents then were lawful or otherwise. He ventured an answer to this question and he submitted that the answer would be in the affirmative – meaning that the respondents' actions were lawful.

With respect, to say that the Enacment was not the governing law in respect of the said property in 1895 when the said property was redeemed, was a submission that was made without taking into account the averment of Shubanah in her affidavit in encl 7 at para 5 thereof. Her averment provided the answer to the poser posed by En Abdul Rasid Sudin. There she deposed that the minutes endorsed in the file vide reference number CLM 18/32 showed that the said property was taken by the Johor State Government in 1932 after the latter had redeemed the said property on the order of His Royal Highness the Sultan and consequently the said property became, together with the building thereto, vested in the Johor State Government. No wonder it was not surprising that Miss Mary Jesmal Pereira for the applicants submitted that the law applicable to land transactions in 1932 was indeed governed by the Enacment.

With regard to the submission of En Abdul Rasid Sudin that it was not clear which law was applicable in respect of the redemption of the said property in 1895, exh 'SY-2A' of encl 7 which exhibited Grant No 7 Township of Johor Bahru and the endorsements therein, clearly showed that there were rules governing land transactions at that period of time. A comparison of exh 'SY-3' of encl 7 with that of exh 'SY-2A' of encl 7 would reveal an interesting fact in relation to its endorsements. In exh 'SY-2A' of encl 7 of Grant No 7 Township of Johor Bahru the endorsement showed that there was a declaration that the said land be vested in His Royal Highness Sultan Abu Bakar as a consideration for the payment of the debt, whereas in exh 'SY-3' of encl 7 which exhibited the land title of the said property, no such endorsement appeared therein. It can be deduced that at the time when the said property was taken by the Johor State Government, no set procedures were followed. In regard to the said property in question there was no endorsement in exh 'SY-3' of encl 7 to show that the said property was vested in His Royal Highness the Sultan at the material time and neither was there any endorsement to show that the said property was vested in the Johor State Government. It is interesting, at this juncture, to refer to a book entitled *National Land Code, A Commentary* (2nd Ed) by Judith Sihombing where the learned author painstakingly traced the background history to the present day land law in Peninsular Malaysia. At p 15, she explained that:

> The Unfederated Malay States consisted of Kedah, Kelantan, Johor, Perlis and Terengganu.

At p 16, the learned author ventured to go into some detail and she had this to say:

> 'Land tenure in these Unfederated Malay States, prior to British intervention, was that of early Malay tenure although, other than in Johor, certain incidents may have been those of Thai law. The states enacted Torrens type legislation, for example Johor in 1910 and Kedah in 1913. Some of these statutes were typically Torrens, others were not.
>
> That of Johor was expressly atypical Torrens. In interpreting this 1910 Enactment, Mills J had observed:

> 'It depends on the terms of the Enactment how far the Legislature intends that people shall be able to rely on the Register. The Johor Enactment is not modelled closely on the Australian Torrens Acts and substantially differs from them. In particular, except in the case of court sales under s 83 and s 90H, the Enactment contains no provision conferring indefeasibility of title or State warranty of title [1936] MLJ 203.'

It can be surmised that in the good old days, Johor had an 'early Malay tenure' and in 1910 it had an Enactment. But En Abdul Rasid Sudin for the respondents submitted that the provisions of the Land Enactment 1910 — referring to the Enacment, was inapplicable and not relevant since the said property was redeemed in 1895. Apart from what I had said earlier in response to what En Abdul Rasid Sudin had submitted, I must say that since the land title to the said property as per exh 'SY-3' of encl 7 which contained no endorsement like the sample version of another land title as reflected in exh 'SY-2A' of encl 7 of Grant No 7 Township of Johor Bahru, the inference would be that the 'early Malay tenure' was so uncertain and I repeat there were no set procedures to be followed. Without a positive set of procedures governing land matters in the good old days in Johor, can we safely say that the redemption of the said property in 1895 was done above board, especially when the beneficiaries of the late Ungku Abdullah were not alerted? That redemption certainly benefited the chettiar at that time while the beneficiaries of the late Ungku Abdullah were left in the dark.

In 1932 when the Johor State Government took over the said property, the Enacment was already in existence and it must surely be the guiding force behind all land matters in Johor at that time.

The preamble to the Enacment reads as follows:

> (2 of 1910 as amended by 5 of 1913, 21 of 1919, 8 of 1920, 6 of 1921, 8 of 1921, 5 of 1924, 13 of 1928, 4 and 14 of 1933, 16 of 1934, (*the revised Edition of the Laws Enactment 1934), 8, 16 and 18 of 1936, 15 of 1938, 13 of 1939, 3 of 1941 and Federation of Malaya Ordinance 57 of 1949 and 51 of 1952.)

and it is a legitimate aid in construing the said Enactment (*Sussex Peerage Claim* (1844) II Cl & F 85; *Turquand v Board of Trade* (1886) 11 App Cas 286; and *Powell v Kempton Park Racecourse Co, Ltd* [1899] AC 143). Buller J in *Crespigny v Wittenoom* (1792) 4 TR 790 at p 793 was of the view that when the meaning of an Enactment was unclear then 'the preamble may be resorted to explain it.' The Enacment was at that time a timely piece of legislation 'to consolidate and amend the law relating to land in Johor.

In regard to the first issue, the answers would be apparent. The redemption of the said property must be done with the prior consent and upon the instructions of the beneficiaries of the late Ungku Abdullah. That being the case, the redemption that was done in regard to the said property in so far as it concerned the legal rights of the beneficiaries of the late Ungku Abdullah was done not in accordance with the law and was invalid. It was an exercise that ran counter to the law and its validity was questionable.

The second issue

Shubanah's affidavit in encl 7 enclosing exhs 'SY-1' and 'SY-4' clearly showed that it was only in 1950 that the said property was declared to be the site for the Telecommunications department. The minutes of A Glencross, the former Commissioner of Lands And Mines, Johor as seen in exh 'SY-1' of encl 7 which was reproduced in the early part of this judgment contained passages which are germane to the occasion and these passages should be reproduced once again:

> 5 In 1950 when it was decided to site the Telecoms building here, Mr Cunyngham-Brown endorsed on the Malay Grant as follows:
>
> This is now state land under s 54 of the Land Enactment vide CL&M 18/1932
>
> No formal enquiry appears to have been held when this was done.
>
> 6 The new Telecoms building is going up on this site.

and from these passages it was crystal clear that no formal enquiry was ever held when it decided to declare the said property as state land. Was s 54 of the Enacment the right section to invoke for acquisition purposes? To answer this question, it would be appropriate to reproduce in verbatim that section in question:

> 54(i) Any person claiming any estate or interest in land under this Part may, at any time, if his claim cannot be properly dealt with under s 42, apply to the Commissioner for an order that any register, book or journal kept at any Land Office under this Enactment shall be rectified, or that any entry may be made or interpolated in any such register, book or journal or that any entry therein may be cancelled: and the Commissioner may either refuse such application, or, if satisfied as to the justice of the case, may make such order in reference thereto as he may think just.
>
> (ii) The Collector and every other person affected by such order of the Commissioner shall obey the same upon being served with a copy of such order.
>
> (iii) Any person aggrieved by any refusal or order of the Commissioner under sub-section (i) may appeal to the court: provided that such appeal shall not be admitted after the expiration of thirty days from the date of the decision appealed against.
>
> (iv) No court, other than the Supreme Court, shall have any jurisdiction in matters provided for by this section'.

and it was entirely meant for the purpose of rectification of the registers. Section 54 of the Enacment does not give authority nor power to the respondents to acquire the said property, and what was written by Cunyngham-Brown as alluded to above cannot, in law, be considered as correct. It was an incorrect assertion of the law by Cunyngham-Brown. To add insult to injury the land title of the said property as exhibited in encl 7 at exh 'SY-3' bore the following passages at the top portion:

> This is now state land under s 54 of the Land Enactment, vide CL&M 18/1932
> Dated the 24 October 1950

CL&M 226/1950 Sgd: Illegible 24.10
Commissioner of Lands And Mines Johor

and the rest of the land title of the said property was typewritten in the Jawi script which was not quite legible, neither was it translated for the benefit of the court. As far as I could make it out, the jawi script was worded in these words (Romanized Malay):

Isnin 158 Alhamdulillah

Wusalli Allah Ali Sai Dina Muhammad Wa'ali lihi Wasahbi Wassallam
Duli Yang Maha Mulia Maharaja Johor Abu Bakar yang dikurniakan Allah Subhanahuwataala baka kerajaan di atas tanah Johor serta segala jajahan daerah takluknya mudah-mudahan barang dilanjutkan Allah usia serta bertambah tambah daulat dan memperolehi kemenangan di dunia akhirat. Amin.

Ketahui oleh dengan fikiran yang seperti kita dan keturunan waris-waris ganti kita dengan sebenar-benar mengurniakan kepada yang mulia Ungku Abdullah … Johor …

Mempunyai sekeping tanah yang di dalam daerah JB … besarnya enam ekar dan 30 percis kerja dan kedudukannya bersepadan seperti di bawah ini

Di sebelah timur dengan Syed Baram dan Encik Andak

Di sebelah barat dengan Syed Janal dan Encik …

Di sebelah utara dengan Encik Hussein bin Yusof

Di sebelah selatan dengan YM Ungku …

Seperti petanya yang ada dituliskan di sebalik kertas ini dengan sempurna hak milik telah kita kurniakan dan serahkan seperti yang tersebut ini kepada YM Ungku Abdullah mempunyai dia selama-lamanya.

Maka dengan akal kita yang sempurna memeteraikan cap dan membubuh tapak tangan di atas surat ini di dalam Johor Bahru

kepada: …

Hari bulan Rabiul Akhir hijrah Nabi Muhammad s.a.w. seribu dua ratus …

tt (Tidak Jelas)

Kepada Pengukur Tanah.

All that the land title said in the Jawi script was that the said property was alienated to the late Ungku Abdullah.

It would also be interesting to refer to s 42 of the Land Enactment (No 1) and that section was worded in this way:

(i) Any person asserting that he has a right otherwise than by succession to a deceased proprietor or by virtue of an agreement for sale to be registered under this Part as the owner of or as having an interest in any land held under entry in the mukim register may apply to the Collector for an order that such memorial shall be made upon the entry in the mukim register as shall register him as such owner or as having such interest. The Collector shall thereupon cause a notice of such application, substantially in the form of Schedule H, to be served on the occupier (if any) of such land, to be published locally in the district, and posted on the land for a period of thirty days, and shall make such enquiry as may be necessary.

(ii) If, after such notice and enquiry, the Collector is of opinion that such application ought to be granted, or if, in the course of such enquiry, it shall be proved, to his satisfaction that some other person is entitled to be registered as the owner of such land or of such interest in the land, then, in either of such cases he shall make an order, substantially in the form of Schedule J, in accordance with his decision and he shall thereupon make the necessary entry in the mukim register.

(iii) A copy of the order above mentioned shall be furnished by the Collector to the person in favour of whom such order is made and, on application, to any other party to the proceedings.'

and I must at once say that before invoking s 54 of the Land Enactment (No 1), the provision of s 42 of the same Enactment must first be complied with. Section 42(i) of the Enacment is clearly worded. It enacts that any person asserting that he has a right otherwise than by succession to a deceased proprietor or by virtue of an agreement for sale may apply for an order that such memorial shall be made upon the entry. It is the duty of the collector to issue a notice of such an application in the form of sch H, and the same ought to be served on the occupier of such land, to be published locally in the district and posted on the land for a period of 30 days. It is only after such notice and enquiry has been carried out that a rectification to the register could be effected after sch J has been issued. And there must also be compliance with s 42(iii) of the Enacment. A perusal of exh 'SY-1' of encl 7 as reproduced somewhere in this judgment clearly showed an alarming lack of compliance with the provisions of s 42(i), (ii) and (iii) of the Enacment. The sum total of all these legal semantics would be this: that the said property was acquired under the wrong section of the Enacment and, consequently, that acquisition must be declared as null and void and of no effect at all. That would be the legal position of the purported acquisition of the said property.

Standing on his own ground, En Abdul Rasid Sudin for the respondents responded. He submitted that with the redemption of the said property amounting to $8,000 in 1895, the Johor State Government had acquired an interest in the said property. It was thus justifiable, so the submission went, for the Johor State Government as a party claiming an interest in the said property to utilize the provision of s 54 of the Enacment in order to apply to the Commissioner of Lands And Mines, Johor for an order that the register of the said property to be rectified and an endorsement to be made therein to show that the said property was taken over by the Johor State Government. In line with the said application, it was submitted that the Commissioner of Lands And Mines, Johor then made the necessary endorsement on the document of title of the said property on 24 October 1950 and by that endorsement the property in question became state land under s 54 of the Enacment as reflected in the file that carried the following reference number — CL&M 18/1932.

En Abdul Rasid Sudin also took exception to the submission that s 42 of the Enacment must come first and be considered in its entirety before s 54 of the same Enactment could be activated. It was his submission that the basis for the endorsement under s 54 of the Enacment was that the Johor

State Government had acquired an interest in the said property after redeeming it for $8,000 in 1895. It was also his submission that in consonance with the requirement of s 54 of the Enacment, the Commissioner of Lands And Mines did the right thing by rectifying the register and made an endorsement showing that the said property was state land after the Johor State Government had redeemed the said property and when the matter could not be dealt with under s 42 of the Enacment. Of crucial importance was the submission of En Abdul Rasid Sudin to the effect that s 54 of the Enacment, as worded, does not stipulate that there has to be a notice or an enquiry under s 42 of the same Enactment before s 54 could apply. From the tenor of his submission it can be surmised that what he was saying was simply this: that s 54 of the Enacment stood independently of s 42 of the same Enactment.

The respondents were using the redemption of the said property on payment of $8,000 as a yardstick to argue that the said property had become vested in the Johor State Government. But the redemption exercise was done without the consent nor notice to the beneficiaries of the said property. The land title of the said property, as reproduced in encl 7 as exh 'SY-3', lacked material particulars and was nowhere like the example of another land title as seen in exh 'SY-2A' of encl 7. From the language employed in s 54(i) of the Enacment, the claimant may resort to s 54 of the same Enactment if the claimant's 'claim cannot be properly dealt with under s 42'. It follows that the rigours of s 42 of the Land Enactment (No 1) must be vigorously applied before s 54 of the same Enactment can be put in motion. The wordings in both s 42 and 54 of the Land Enactment (No 1) are very clear and unambiguous and in order to construe the meaning behind those sections it would be ideal to look at the words employed and construe it accordingly. Lord Warrington of Clyffe in *Barrell v Fordree* [1932] AC 676 at p 682 once remarked that:

> The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.

It must not be forgotten that the deliberations of the legislature must have been made in the right atmosphere and the legislature must have intended what they had expressed after all, as Parke J once said in *R v Banbury (Inhabitants)* (1834) 1 Ad & El 136 at p 142 that the rule of construction would always be 'to intend the legislature to have meant what they have actually expressed.' In similar vein, Lord Parker CJ in *Capper v Baldwin* [1965] 2 QB 53 at p 61 in refined language said that 'the intention of Parliament must be deduced from the language used.' In my judgment, the words employed in ss 42 and 54 of the Enacment were so plain and simple that the task of interpretation could hardly be said to arise.

The English Court of Appeal in *Re King, deceased* [1963] Ch 459 had to interpret the provision in s 14(1) of the Law of Property Act 1925, and that section enacted that the benefit of every covenant in a lease to be performed by the lessee 'shall be annexed and incident to and shall go with the reversionary estate in the land.' Diplock LJ at p 497 of the report,

construes that section in these words:

> The expression 'go with' must be intended to add something to the concept involved in the expression 'annexed and incident to' and in my view connotes the transfer of the right to enforce the covenant from the assignor to the assignee with the consequent cessation of the right to the assignor to enforce the covenant against the tenant.

and it would be clear that Diplock LJ assigned a meaning to every word in the statute. In assigning the meaning to the words that appear in s 54(i) of the Enacment especially the following words:

> Any person claiming any estate or interest in land under this Part may, at any time, if his claim cannot be property dealt with under s 42, apply to the Commissioner for an order that any register, book or journal kept at any Land Office under this Enactment shall be rectified, …

one must be robust and downright forthright. It simply meant that if the claimant's claim cannot be decided under s 42 of the Enacment, then the claimant may resort to s 54 of the same Enactment. It brings into sharp focus the need to apply and put into motion s 42 of the Enacment before resorting to s 54 of the Enacment. That would be the correct interpretation of s 54 of the Enacment. This was my judgment and I so hold accordingly.

I would therefore answer the question posed under the second issue in favour of the applicants. The acquisition exercise made under the wrong section of the Enacment must be struck down and be considered as null and void.

The golden rule of construction as propounded by Parke B in *Becke v Smith* (1836) 2 M & W 191 at p 195 must surely ring true in the context of the present case. There his Lordship aptly said:

> It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.

In construing s 54(i) of the Enacment, there was no necessity, in view of the simple words employed therein, to 'vary or modify' the language. It was so ordinarily simple and straightforward that it requires no judicial intelligence to interpret those words. The words were chosen to reflect the intention of the legislature and I must give effect to it accordingly. This was my judgment and I so hold accordingly.

The third issue

Miss Mary Jesmal Pereira for the applicants submitted with vigor and vitality that the law of limitation cannot be triggered in a situation where the said property was acquired by the Johor State Government under the wrong section of the Enacment. She reiterated the positions of both the applicants

as the co-administrators of the estate of the late Ungku Abdullah, and she submitted that by applying the concept of the law of equity, the applicants were not barred from suing the respondents because according to her, the issue of statutory limitation cannot be applied to the factual matrix of the present case. There are passages appearing in 28 *Halsbury's Laws of England* (4th Ed), at p 328 para 726 which merit reproduction:

> *Where the cause of action has accrued on or after the date of death* and there is no executor, *then if the claim is for the recovery of land* or an advowson *the administrator is deemed to claim as if there had been no interval of time between the death and the grant of letters of administration.* If there is doubt whether the death or the accrual occurred first, the death will be presumed to have preceded the accrual (*Atkinson v Bradford Third Equitable Building Society* (1890) 25 QBD 377 (CA)). (Emphasis added.)

and it categorically states that the interval between the date of death and the grant of letters of administration would not be calculated for the purpose of determining the issue of limitation. This meant that even though the co-administrators of the estate of the late Ungku Abdullah in the persons of both the applicants were appointed quite late in the day — to be precise the letters of administration were extracted on 13 January 1998 although it was dated 26 June 1996, yet the axe of limitation has yet to fall.

But En Abdul Rasid Sudin for the respondents took exceptions to the submissions of Ms Mary Jesmal Pereira. He drew my attention to the affidavit of Shubanah in encl 7 especially at paras 10, 11 and 12 thereto and he submitted that the beneficiaries of the late Ungku Abdullah knew that the said property was redeemed as early as in 1908 and he referred to the letter dated 18 July 1975 as seen in exh 'SY-5' of encl 7 to back up his submission. He submitted, in serious vein, that the said property was redeemed in 1895 and calculation wise, using the year 2001 as the barometer, the episode took place 106 years ago. Indeed it was a long drawn matter. Slightly more than one century. With that length of time, it was the contention of Mr Abdul Rashid Sudin that it was highly improper to pursue the matter since it had exceeded the permitted period, under the law, to institute legal proceedings. He further submitted that whatever action undertaken, it would surely prejudice not only the respondents but also the third parties especially the Telecoms Department who had reserved the usage of that part of the said property by way of a *gazette* notification vide GN 386 dated 10 May 1951.

Encik Abdul Rasid Sudin continued with his submission. He submitted that the claims of both the applicants have caused an injustice to the respondents. He ventured a reason for that injustice. He said that the respondents have lost concrete evidence to disprove or to rebut all the allegations advanced by both the applicants due to the non-availability of certain documents. He pointed out that it was rather difficult and indeed impossible on the part of the respondents to trace certain documents which have been lost or using the Malay language — a language understood by all Malaysians, those documents were overtaken by the rolling years or 'ditelan zaman'. Indeed, time would wipe out certain salient and useful documents

favorable to the respondents. He submitted that both the applicants took their own sweet time to institute these proceedings — some 106 years after the said property had been redeemed. He submitted that if such claims were to be allowed, it would open the floodgates for others to follow and those others would make and institute their claims on matters that had happened a long time ago. He pointed out that actions that had exceeded the limitation period could very well turn out to be untrue. He then drew my attention to *Halsbury's Laws of England* (4th Ed) Vol 28 at para 605 of p 266 thereto, which was worded in this fashion:

> Policy of the Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely: (1) that long dormant claims have more of cruelty than justice in them (*A'Court v Cross* (1825) 3 Bing 329 at pp 332–333, per Best CJ; RB Policies at *Lloyd's v Butler* [1950] 1 KB 76 at pp 81–82, [1949] 2 All ER 226 at p 229, 230, per Streatfeild J); (2) that a defendant might have lost the evidence to disprove a stale claim (*Jones v Bellgrove Properties Ltd* [1949] 2 KB 700 at p 704, per Goddard CJ); and (3) that persons with good causes of actions should pursue them with reasonable diligence (*Board of Trade v Cayzer, Irvine & Co* (1927) AC 610 at p 628 (HL), per Lord Atkinson).

Encik Abdul Rasid Sudin rounded up his submission by saying that the redemption price of $8,000 that the Johor State Government advanced to the chettiar was equivalent to the value and the charge of the said property at that point of time, and that being the case it was his submission that it was highly improper for the Johor State Government to be ordered to compensate both the applicants and the other beneficiaries of the late Ungku Abdullah in whatever form at this point of time. For these reasons, he prayed that the notice of motion in encl 3 as amended in encl 6 of both the applicants be dismissed with costs.

Miss Mary Jesmal Pereira reiterated the point that since the said property was acquired under the wrong section of the Enacment, the statute of limitation cannot be activated in favour of the respondents. She further submitted that there was no limitation in respect of an action seeking a declaration from the court. In short, it was her submission that in seeking declaratory relief the law of limitation would not apply.

Limitation deprives or restricts the right of an aggrieved person to seek recourse to legal remedy. It operates as an absolute defence in favour of the defendant. Two authorities must be highlighted in order to show the sting of the law of limitation. The first would be the case of *Credit Corporation (M) Bhd v Fong Tak Sin* [1991] 1 MLJ 409 where Hashim Yeop A Sani CJ (Malaya) (as he then was) at pp 413–414 aptly said:

> The limitation law is promulgated for the primary object of discouraging plaintiffs from sleeping on their actions and more importantly, to have a definite end to litigation. This is in accord with the maxim *interest reipublicae ut sit finis litium* that in the interest of the state there must be an end to litigation. The rationale of the limitation law should be appreciated and enforced by the courts.

Next, it would be the Privy Council's case of *Yew Bon Tew & Anor v Kenderaan Bas Mara* [1983] 1 MLJ 1 at p 5 where Lord Brightman had this to say of limitation:

> When a period of limitation has expired, a potential defendant should be able to assume that he is no longer at risk from a stale claim. He should be able to part with his papers if they exist and discard any proofs of witnesses which have been taken, discharge his solicitor if he had been retained; and order his affairs on the basis that his potential liability has gone. That is the whole purpose of the limitation defence.

Basically, the rationale for the law of limitation is simply to discourage stale demands. The lateness and the dilatory conduct of the plaintiff should be construed in favour of the defendant. But the delay as alluded to in paras 14 and 15 of encl 2 went unchallenged and the reasons advanced by both the applicants must have been the truth. Both the applicants have summoned enough Dutch courage, so to speak, in filing the notice of motion in encl 3. The delay in the case of *Kredin Sdn Bhd v YTF Investments Sdn Bhd* [1998] 1 MLJ 46 went unexplained and Shaik Daud JCA delivering the judgment of the court censured such a move. At p 54 of the report, this was what his Lordship had to say:

> The central issue is whether the sale and purchase agreement has in law come to an end, or is it still subsisting. We hold that in law the agreement came to an end on 1 July 1983 when Kredin failed to settle the balance of the purchase price. If there is a cause of action at all, it arose on 1 July 1983. We agree with the contention of Mr Royan of counsel for YTF that since the action was filed more than 11 years after the termination, it is statute-barred. Although Kredin's action in essence is seeking declaratory relief, nevertheless such relief can be barred because of undue delay. In *Hj Hussin bin Hj Ali & Ors v Dato' Hj Mohamed bin Yaacob* [1983] 2 MLJ 227, an action for declaratory reliefs filed over three years after the cause of action arose, the Federal Court held (at p 232):
>
> > 'Now the granting of a declaratory judgment is a matter purely at the discretion of the court. We do not think that the circumstances surrounding the present appeals would justify our exercising this discretion in favour of the appellants, where there has been, in one view, unreasonable vacillation and delay.'
>
> In the present case too, there has been delay of over 11 years and nowhere has the appellant explained their inaction for the delay.

I would, without hesitation, accept the explanation for the delay in filing the notice of motion in encl 3 as amended by encl 6. Would the delay of 106 years from the time the said property was redeemed be construed adversely against both the applicants bearing in mind that both the respondents have been prejudiced thereto? In answering this question one must certainly balance the interests of the parties in the present case. The respondents were not able to trace the relevant documents to bolster up their case while the applicants were the victims of an acquisition exercise which ran foul of the law in that the wrong section of the Enacment was utilized. Not only that, the beneficiaries of the late Ungku Abdullah were not informed with regard to the redemption of the said property by the Johor State

Government. In fact, the consent of the beneficiaries of the late Ungku Abdullah were not obtained before the Johor State Government proceeded to redeem the said property. To add insult to injury, no formal enquiry was ever held before the said property was purportedly acquired by the Johor State Government.

The whole strength of the applicants' case hinged on the acquisition exercise that was done on 24 October 1950 under the wrong section of the Enacment. Since the said property was acquired under the wrong section of the Enacment, there was in fact no acquisition at all undertaken by the Johor State Government and, consequently, the said property was never vested in the Johor State Government. The ownership of the said property remained throughout and to this day as the estate of the late Ungku Abdullah and that estate had not been distributed to the beneficiaries as yet. When the said property was purportedly acquired on 24 October 1950, time remained still and the rigours of the law of limitation was not activated at all. In fact the law of limitation was not applicable to the facts of the present case. In so holding, I must impose a caveat. I am not extending nor postponing the limitation period in favour of the applicants. This was a case where the law of limitation played no part at all. In 1895 when the Johor State Government redeemed the said property, it was an act of benevolence: very friendly, very helpful and very charitable gestures —notwithstanding the fact that the beneficiaries of the late Ungku Abdullah were not told nor were their consents obtained before the redemption was undertaken. After the said property had been redeemed in 1895, the Johor State Government purportedly held the title to the said property in total disregard to the legal rights of the beneficiaries of the late Ungku Abdullah. Surely the beneficiaries of the late Ungku Abdullah ought to be recognized by the Johor State Government when the said property was redeemed in 1895; they should not be side stepped since they are entitled, in law, to the estate of the late Ungku Abdullah.

In my judgment, the law of limitation has no application to the facts of the present case. Since the said property was wrongly acquired under the wrong section of the Enacment, time remained at large and the law of limitation was inapplicable and it cannot govern the outcome of the present case at all. The law books are replete with authorities on the law of limitation. It would do justice to refer to some of them even though they have no bearing at all to this case. Thomson CJ, in *Lee Lee Cheng v Seow Peng Kwang* [1960] 26 MLJ 1, had this to say on the law of limitation (see p 2 of the report):

> The period prescribed by s 8(3)(b) of the Civil Law Ordinance is a period of limitation. If the court has power to extend it then it has power to extend any other period of limitation and it would thus be open to every litigant with a statute–barred grievance to come to the court and attempt to have the statutory bar removed so that he could be heard. The principle of limitation is a very ancient one (see 3 Black, Com 185) and the object of modern statutes of limitation has been thus described by Wood, Vice-Chancellor, in the case of *Manby v Bewicke* 3 K & J 342 at p 352:

> 'The legislature has, in this as in every civilised country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceable possession of their property, and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain.'

There is, of course, no reason why the legislature should not detract from the certainty which the subject thus enjoys by giving the courts power to enlarge the periods of limitation prescribed by statute but one would expect any statute which had this object to express it with very great clearness and particularity. As was said by Archibald J, in the case of *Washer v Elliott* 1 CPD 169, at p 174:

> 'It is not reasonable to expect that such a change would be made without particular and precise enactments regulating the exercise of a power so extensive and exceptional, or that it would be left to be implied from mere general words the purpose and object of which may be answered by attributing to them a natural but more limited meaning.'

In *Commissioner of the Federal Capital v Insurance Company of North America* [1968] 2 MLJ 143, the then Federal Court had occasion to consider an application by way of motion to preclude the respondent in that case from relying on the defence of limitation. The headnote of the case at p 143 would be sufficient to show the facts and the judgment of the then Federal Court and I will now reproduce the headnote:

> The respondent, insurer for the appellant, was brought in as a third party to an action instituted by the Central Electricity Board against the appellant, claiming compensation for damage caused to certain electrical installations. Clause 7 of the contract of insurance read: 'If the company shall disclaim liability … and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration … the claim shall for all purposes be deemed to be abandoned …'
>
> The notice of disclaimer was served on the appellant on March 12, 1965. On August 4, 1965, the respondent applied for an order under s 5 of the Arbitration Ordinance, 1950, to stay further proceedings until the differences between the appellant and the respondent were submitted to arbitration. The order was granted on September 26, 1966, that is, after the expiry of the contractual period of limitation.
>
> The appellant by way of motion, applied for a variation of the order to the effect that the respondent should be precluded from relying on the lapse of time between August 4, 1965 and September 26, 1966 in computing time for the purpose of pleading limitation under cl 7 of the contract as a defence to the claim in the arbitration proceedings. Gill J. dismissed the motion ([1967] 2 MLJ 161). On appeal,
>
> **Held**, allowing the appeal:
>
> (1) by virtue of s 3 (1) of the Civil Law Ordinance and s 23(2) and 25(2) of the courts of Judicature Act 1964, the High Court has inherent equitable jurisdiction to restrain a defendant from setting up the defence of limitation under a contract (or statute) if the following circumstances are

present: (a) two forums with nominal jurisdiction to hear and resolve a dispute between the same parties; (b) the statutory or contractual period of limitation should have expired whilst the question of the appropriate forum to resolve the dispute was pending; (c) it was beyond the control of the aggrieved party to do anything consistent with his legal rights to escape the consequences of his claim being barred by the effluxion of time;

(2) the conditions necessary for the court to exercise its inherent jurisdiction were present in this case. An order should therefore be made varying the order of 26 September 1966 in terms of the motion.

Rustomji on *The Law of Limitation and Adverse Possession* (7th Ed, 1992) by SP Sen Gupta is a book worth reading. There the learned author makes copious references to Indian, English and American authorities as well as to the Code de France. At pp 10 –11 of the book, the learned author writes:

> *Act quiets long possession* — The object of limitation is to quiet long possession and to extinguish state demands (*John v Summer* AIR 1943 Sind 33 at p 36, ILR 1942 Karachi 466; *Luchmee v Runjee* (1873) 20 WR 375 (PC)). All statutes of limitation have for their object the prevention of the raising up of claims at great distances of time when evidence is lost, and in all well-regulated countries, the quieting of possession is held as an important point of policy (*Trustees of Dundee Harbour v Dougall* (1852) 1 Macq HL 321; *Luchmee v Runjee* (1873) 20 WR 375 (PC); *Tara Nath v Ishwar Chandra* (1911) 16 CWN 398 at p 401; *R Rama Reddi v R Babu Reddi* ILR (1912) 37 Mad 186 at p 191). The public have a great interest in having a known limit fixed by law to litigation, for the quiet of the community, and that there may be a certain fixed period, after which the possessor may know that his title and right cannot be called in question (*Cholmondeley v Clinton* (1820) 2 Jac & W 140). 'Time', said Lord Plunket, speaking of the law of prescription, 'holds in one hand a scythe, in the other an hour-glass. The scythe mows down the evidence of our rights, the hour-glass measures the period which renders that evidences superfluous' (*Clippen's Oil Co Ltd v Edinburgh and Dist Water Trustees* AIR 1904 Cal 64 at p 69). The use of prescription is so necessary that without this remedy, every possessor being liable to be troubled in all eternity, there would never be any perfect assurance of a sure and peaceable possession (*Domat*, Vol I, p 867).

At p 13, the learned author states:

> *Morality of plea of limitation* — Limitation is not unjust for a discreditable defence and there is nothing morally wrong in a defendant relying upon it (*Rhodesia Rly Ltd v Resident Commr, Bechuanaland* (1933) 146 IC 926 at p 927 (PC); *Charan Das v Amirkhan* ILR (1920) 48 Cal 110, 116 (PC)). A plea of limitation is not a mere technical plea and a party who can invoke the law of limitation in his favour is justified in doing so, and ought not to be deprived of the advantage thereby gained (*Manghumal Jethanand v Aratmal Satramdas* (1923) 76 IC 119 (Sind): AIR 1924 Sind 47 at p 48. See also *Charan Das v Amir Khan* ILR (1920) 48 Cal 110 at p 116 (PC)). It may often be a very righteous defence (*Roddam v Morley* (1857) 1 De G & J 1 at p 23, quoted with approval by the Privy Council in *Rhodesia Rly Ltd v Res, Commr, Bechuanaland* (1933) 146 IC 926 at p 927 (PC)). The court has not to determine whether the defence (of limitation) is handsome or conscientious, but whether it is

good in law (*Reeves v Butcher* (1891) 2 QB 509, at p 511; *Tea Financing Syndicate Ltd v Chandra Kamal* ILR (1929) 56 Cal 575 at p 576 followed). Observations in various cases (See *Kanwar Charanjit Singh v Bishen Singh* (1914) 23 IC 462 (Punj)), that when a plaintiff's claim is just and equitable, it will not be dismissed as time barred, cannot be supported (see *Mahommad Yunis v Trilokchand* (1934) 153 IC 1058 at p 1061 All. See also *Hansraj Gupta v Official Liquidator* ILR (1932) 54 All 1967 (PC)). Where no limitation was provided when the suit was filed, it cannot be said to be time barred (*Sami v Board of Revenue* AIR 1988 All 185).

Continuing in a serious vein, the learned author at p 16 lays down the following propositions of the law:

> The following are three correlated and familiar propositions of the law of limitation:
>
> (1) Limitation does not extinguish the right but only bars the remedy. The word 'right' is used here to mean a primary or substantive right, and the proposition is true only if the word is understood in that limited sense. For a remedy is also a right in the wider sense of the word, a sanctioning or secondary right, a remedial or procedural right as it is often called, and limitation does undoubtedly extinguish such a right, though, subject to the qualification already mentioned, leaving the substantive right unaffected. Of course, the remedy can be revived, or `recreated' would perhaps be the better word to use by a law for the purpose, just as any other right, including a substantive right, can be so created.
>
> But, in so far as the particular remedial right to which it applies is concerned, limitation undoubtedly extinguishes the right. It is, however, important to remember that limitation extinguishes only the particular remedial right which is its victim and that, since it leaves the substantive right unaffected, that right can still be enforced in other ways if other ways are available, not merely indirectly by the enforcement of a lien or by obtaining a fresh promise, or by reason of payment notwithstanding the bar being safe from recall, but also in a positive and direct manner.
>
> (2) If a remedy becomes barred under the law of limitation in force at the time, a subsequent change in the law giving a longer period of limitation will not by itself, in the absence of provision for the purpose, revive, or rather, recreate the remedy. The particular remedial right is extinguished and can be recreated only by a law for the purpose. But the substantive right and other remedial rights, if any, for its enforcement remaining unaffected, these remedial rights can be exercised so long as they are not barred by time.
>
> (3) The law of limitation to apply is the law in force at the time the proceeding in question is instituted (*Palais Central Bank v K Joseph Augusti* AIR 1966 Ker 121).

And at p 18, the learned author further states that:

> The court ought not to put an interpretation upon a statute of limitation by implication and inference (*Lala Bal Mukand v Lajwanti* AIR 1975 SC 1089). Where the language of a statute is clear, the court is bound to give effect to its plain meaning but where the language of the enactment is not itself precise or is ambiguous or of doubtful import, recourse may be had to extraneous considerations (*General Accident v Janmahomed* AIR 1941 PC 6), and

under such circumstances the court would adopt a construction in favour of the right to proceed rather than one barring such right (*Jethmal v Amb Singh* AIR 1955 Raj 97; *AR Senthilanathan Chettiar v Panchayat Board* AIR 1952 Mad 182; *Nalin v Bejoy* AIR 1953 Cal 50; *Jayan Lakshmi v CIT* AIR 1967 AP 99).

Legislative wise, in West Malaysia, the law of limitation is governed by the Limitation Act 1953 (Act 254) ('the Act') and our Act is based on the English Limitation Act 1939. There are provisions in the Act that extended or postponed the limitation periods under certain situations and these provisions can be seen in Part III thereto — from ss 24–29. Section 24 speaks of an extension of limitation period in case of disability; s 25 relates to an extension of limitation period where the debtor administers the estate of his creditor; s 26 relates to fresh accrual of action on acknowledgment or part payment; s 27 refers to formal provisions as to acknowledgments and part payments; s 28 talks of the effect of acknowledgment or part payment on persons other than the maker or the recipient thereto; and finally, s 29 relates to postponement of limitation period in case of fraud or mistake. To me, ss 26–28 of the Act are the relevant provisions governing the revival of a cause of action in the event of an acknowledgment or part payment. Section 26 of the Act enacts as follows:

(1) Where there has accrued any right of action to recover land or to enforce a mortgage or charge in respect of land or personal property, and —
   (a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or
   (b) in the case of any such action by a mortgagee or chargee the person in possession as aforesaid or the person liable for the debt secured by the mortgage or charge makes any payment in respect thereof, whether principal or interest,

   the right shall be deemed to have accrued on and not before the date of the acknowledgment or last payment.

(2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment.

   Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder of the rent or interest then due, but any payment of interest shall have effect, for the purposes of this subsection only, as if it were a payment in respect of the principal debt.

and it clearly provides for a fresh accrual of action under two situations. The first would be in relation to actions to recover land or to enforce a mortgage or charge in respect of land or personal property (see s 26(1) of the Act; and *Bank of America National Trust Savings Association v Cheong Hoon Chong* [1983] 1 MLJ 285). The second would be in relation to actions to recover any debt or other pecuniary claim, or any claim to the personal estate of a

deceased person, or to any share or interest of any such estate (see s 26(2) of the Act, and *Wee Tiang Teng v Ong Chong Hooi & Anor* [1978] 2 MLJ 54 and *Oversea-Chinese Banking Corporation Ltd v Philip Wee Kee Puan* [1981] 2 MLJ 83 (FC), [1984] 2 MLJ 1 (PC)). In short, in the context of s 26 of the Act, only two acts may constitute or give rise to a fresh accrual of action:

(1) the acknowledgment of the claim; and

(3) the making of any payment in respect of the claim.

The word 'acknowledgment' that appears in s 26 of the Act has been construed to mean an 'admission' by Lord Denning in *Good v Parry* [1963] 2 All ER 59. At p 61 of the report, his Lordship had this to say:

> Nowadays, as a result of this new Act, there is no necessity to look for a promise, express or implied. There need be only an acknowledgment of a debt or other liquidated amount. That means I think, that there must be an admission that there is a debt or other liquidated amount outstanding and unpaid. Even though the debtor says in the same writing that he will never pay it, nevertheless it is a good acknowledgment. In order to be an acknowledgment, however, the debt must be quantified in figures or, at all events, it must be liquidated in the sense that it is capable of ascertainment by calculation, or by extrinsic evidence, without further agreement of the parties.

What amounts to an acknowledgment would vary from case to case. There are no hard and fast rules. At the end of the day, it is a question of fact and it is up to the court to decide (*Langrish v Watts* [1903] 1 KB 636). Kerr J in *Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 1 WLR 565 at p 575 gave a bird's eye view of the law in these words:

> But taking the debtor's statement as a whole, as it must be, he can only be held to have acknowledged the claim if he has in effect admitted his legal liability to pay that which the plaintiff seeks to recover. If he has denied liability, whether on the ground of what in pleader's language is called `avoidance', or on the ground of an alleged set off or counter claim, then his statement does not amount to an acknowledgment of the creditor's claim. Alternatively, if he contends that some existing set offs or cross-claim reduces the creditor's claim in part, then the statement, taken as a whole, can only amount to an acknowledgment of indebtedness for the balance. In effect, `acknowledges the claim' means that the statement in question must be an admission of that indebtedness which the plaintiff seeks to recover notwithstanding the expiry of the period of limitation.

Now, the affidavit of Shubanah in encl 7 that was affirmed on 6 September 1999 as alluded to earlier, in particular at para 8 thereof gave an inkling that there might have been an acknowledgment. That para 8 was alluded to in the body of this judgment and the Malay version was worded in this fashion:

> 8. Saya sesungguhnya percaya bahawa harga penebusan tanah tersebut sebanyak $8,000 yang dibuat oleh Kerajaan kepada chettiar yang berkenaan adalah sama dan selaras dengan nilai dan gadaian atas tanah tersebut ketika itu, dan kini adalah tidak wajar bagi Kerajaan Negeri Johor membayar apa-apa jua bentuk pampasan atau gantirugi kepada Pemohon-Pemohon ataupun waris-waris Almarhum Ungku Abdullah yang lain.

but, with respect, on the available authorities, the averment in para 8 of encl 7 can never be construed to be an acknowledgment of a debt. It was an averment which showed that the said property had been redeemed at RM8,000 by the Johor State Government to the chettiar, and that amount was said to be at par with the value of the charge that was placed on the said property at that material time and, consequently, it was unwise for the Johor State Government to pay any compensation or damages to the applicants or to the beneficiaries of the late Ungku Abdullah. Moreover, by virtue of s 27(1) of the Act, every such acknowledgment shall be in writing and signed by the person making the acknowledgment.

Be that as it may, it was part and parcel of my judgment and I so hold that the law of limitation has no relevance to the facts of the present case for the reasons alluded to by me somewhere in this judgment. In adjudicating encl 3 as amended by encl 6 — the notice of motion, I have kept an open mind. I have examined the facts in its entirety and I have alluded to the relevant laws. I took into consideration the submissions of the parties through their hardworking counsel. No stones were left unturned.

In the early part of this judgment, I posed three questions:

(1) Was it really true that the fate of the beneficiaries of the estate of Ungku Abdullah had been determined by the law of limitation?

(2) Were the minutes of A Glencross a damper to the applicants in that everything was a foregone conclusion?

(3) Was the said property a state land?

and I will now answer these three questions in the negative. Surely the redemption of the said property done in a clandestine manner without the knowledge nor consent of the beneficiaries of the late Ungku Abdullah must be construed as an act tainted with illegality. The applicants and the beneficiaries of the late Ungku Abdullah ought not to be penalized for the failure of the Johor State Government in acquiring the said property not in accordance with the right section of the Enacment. The acquisition made under the wrong section of the Enacment must be declared as null and void under the law.

The declarations sought for in encl 3 of prayers (b) and (c) as amended by encl 6 were entirely within my domain to grant. It was entirely an exercise of judicial discretion based on the available evidence. Lord Sterndale MR in *Hanson v Radcliffe Urban District Council* [1922] 2 Ch 490 once remarked that:

> The power of the court to make a declaration … is now almost unlimited; I might say only limited by its own discretion.

In well defined situations, the courts may refuse to grant declarations. Some examples may be cited here:

(1) In *Blackburn v Attorney-General* [1971] 1 WLR 1037, the Court of Appeal refused to make a declaration on a hypothetical question of whether by signing the Treaty of Rome, Her Majesty's Government would irreversibly surrender in part the sovereignty of its Parliament.

(2) In *Cox v Green* [1966] 1 Ch 216, the court refused to grant a declaration because it involved a question of morality and not law.

(3) In *British Railways Board v Pickin* [1974] AC 765, a declaration was refused because there was an attempt to challenge the validity of Parliamentary proceedings.

(4) In *Datuk Amir Kahar bin Tun Mustapha v Tun Mohd Said bin Keruak & Ors* [1994] 3 MLJ 737 at p 747, the court refused to grant a declaration because the application was said to be frivolous and vexatious and an abuse of the process of the court.

(5) In *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors v Karpal Singh* [1992] 1 MLJ 147, declaration was refused because the matter was said to be theoretical, hypothetical, abstract, premature or academic in nature.

(6) In *Merdeka University Bhd v Government of Malaysia* [1981] 2 MLJ 356, the court rejected an application for a declaration and ruled that the government, in rejecting an application for the setting up of a private university, had acted fairly and reasonably.

But these examples cannot influence the outcome of encl 3 as amended by encl 6. For the reasons adumbrated above, I allowed encl 3 as amended by encl 6, particularly prayers (a), (b), (c), and (d). In encl 2, both the applicants deposed that they were claiming from the Johor State Government for the return of the said property; and both of them also deposed that in the event that this could not be done — perhaps because the Telecommunications Department are currently sited on that property, they claimed from the Johor State Government compensation and/or damages to be accorded to them together with the other beneficiaries whose rights have been denied. Now, prayer (f) of encl 3 as amended by encl 6 gave this court the power to order any other relief which would be fit and appropriate (see *Lim Eng Kay v Jaafar bin Mohamed Said* [1982] 2 MLJ 156 as applied in *Fulcrum Capital Sdn Bhd v Dato' Samsudin Abu Hassan (Rahaz Sdn Bhd & Anor, Interveners) (and another application)* [2001] 5 CLJ 73, [2001] 1 AMR 875) and, in this regard, and in view of the fact that the Telecommunications Department is currently sited on the said property, I made an order that the Johor State Government compensate by way of damage both the applicants and the beneficiaries of the estate of Ungku Abdullah whose rights have been infringed. The damages, so ordered, must be assessed by the Senior Assistant Registrar of the High Court of Johor Bahru. As agreed by both counsel for the parties and acting within the ambit of prayer (f) of encl 3 as amended by encl 6, I made an order for the stay of my judgment (*Leong Chee Kong & Anor v Tan Leng Kee (No 2)* [2001] 5 CLJ 408, [2001] 1 AMR 1117). Justice must be seen to be done and on the available evidence, justice must be meted out in big doses to both the applicants and the beneficiaries of the estate of Ungku Abdullah.

Addendum

On the instructions of the honourable Chief Judge, Malaya, I called both counsel to my chambers in the Kuala Lumpur High Court on 11 April 2001

in order to announce my written judgment. Both the learned counsel were present. Once again, I would like to record my appreciation to counsel on both sides for the assistance they have rendered me in adjudicating encl 3 as amended in encl 6.

Order accordingly.

Reported by Jafisah Jaafar